

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



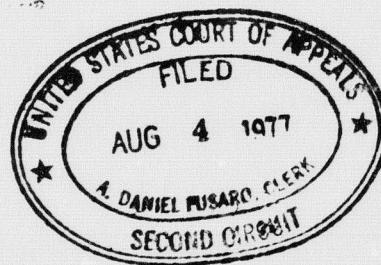


# DOCKET NO 77-1249

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
:  
UNITED STATES OF AMERICA,  
:  
Plaintiff-Appellee,  
:  
-v-  
:  
BARTHOLOMEW BUIGUES, ANGELO PUIG,  
:  
IRMA ANES, SUSAN HOROWITZ and  
:  
JOHN SAMMARCO,  
:  
Defendants-Appellants.  
:  
-----X

APPENDIX OF APPELLANT  
SUSAN I. HOROWITZ



PAGINATION AS IN ORIGINAL COPY



INDEX

Document No.

Document

|   |                                                               |
|---|---------------------------------------------------------------|
| A | Docket Entries U.S.D.C., S.D.N.Y.                             |
| B | Indictment                                                    |
| C | Charge To Jury                                                |
| D | Judgment                                                      |
| E | Transcript of Trial (Pages Referred<br>To In Brief On Appeal) |

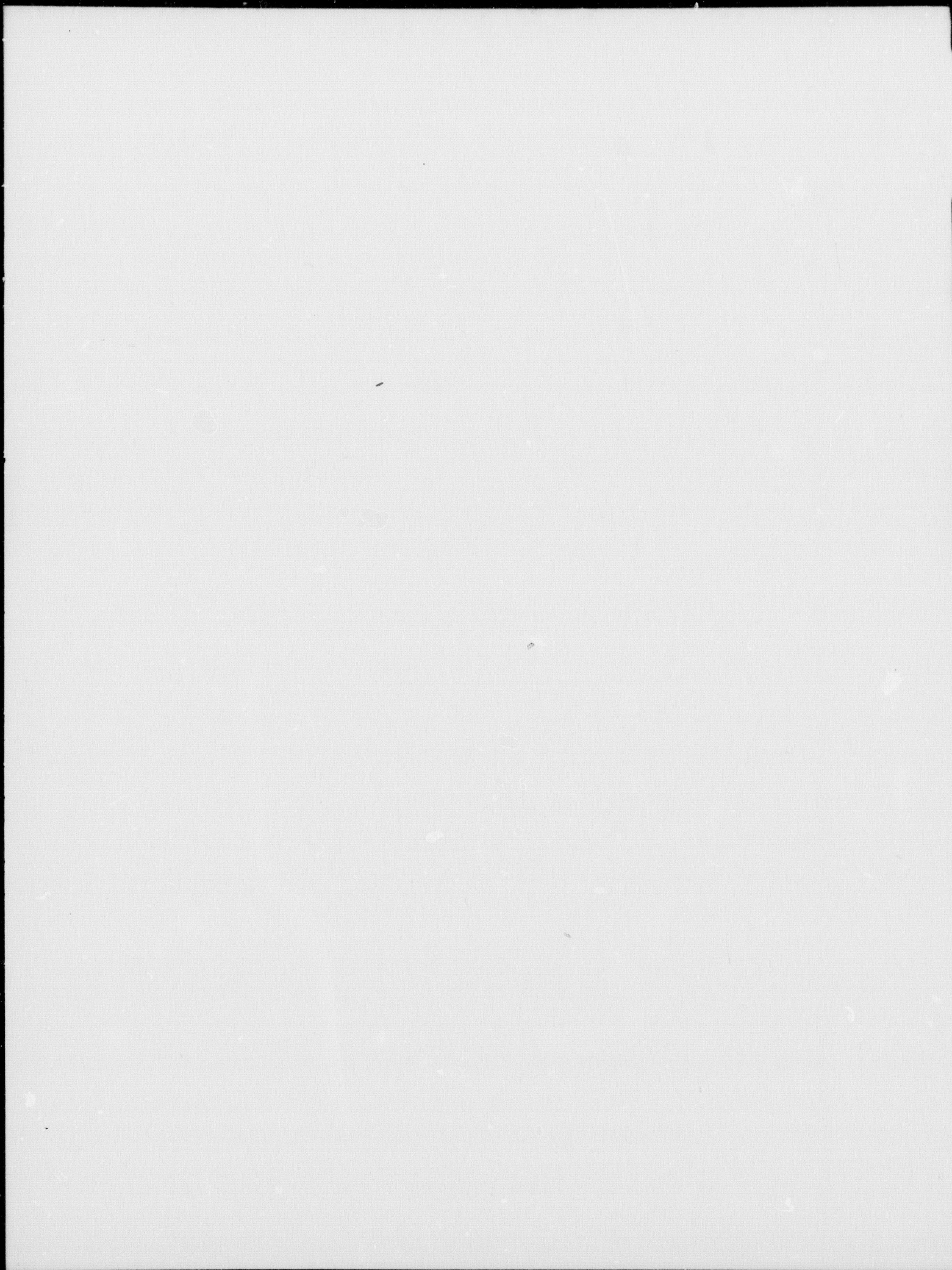




Exhibit A

|        |      |                 |            |      |    |
|--------|------|-----------------|------------|------|----|
| 0208 1 | 0848 | HOROWITZ, SUSAN | 08 31 1976 | 0848 | 05 |
|--------|------|-----------------|------------|------|----|

|                                            |                                                                             |          |
|--------------------------------------------|-----------------------------------------------------------------------------|----------|
| U.S. TITLE SECTION<br>18:371<br>18:287 & 2 | Consp. to commit offenses against U.S.<br>False claims against U.S. Agency. | 1<br>2,3 |
|--------------------------------------------|-----------------------------------------------------------------------------|----------|

1/17

| II. KEY DATES & INTERVALS                                                        |                                                                                                             |                                                           |                                                  | SUPERSEDING COUNTS                                                                                  |  |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------|--|
| ARREST or<br>U.S. Custody Began<br>8-31-76<br>Summons Served<br>First Appearance | INDICTMENT<br>High Risk Date<br>8-31-76<br>Indict. Waived<br>In Charging District<br>Superseding Indictment | ARRAIGNMENT<br>9-9-76<br>1st Plea<br>9-9-76<br>Final Plea | TRIAL<br>Voor Dire<br>Trial Began<br>Trial Ended | SENTENCE<br>Disposition of Charges<br>Convicted<br>Acquitted<br>Dismissed<br>On Government's Motion |  |

| MAGISTRATE                                                                                                                          |      |             |                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------|------|-------------|-------------------------------------------------------------------------------------------------------------------------|
| Search Warrant<br>Issued<br>Returned<br>Summons<br>Issued<br>Served<br>Arrest Warrant Issued<br>COMPLAINT<br>OFFENSE (In Complaint) | DATE | INITIAL NO. | INITIAL APPEARANCE DATE<br>PRELIMINARY EXAMINATION<br>REMOVAL HEARING<br>WAIVED<br>NOT WAIVED<br>INTERVENING INDICTMENT |

|                                                         |                                                                              |
|---------------------------------------------------------|------------------------------------------------------------------------------|
| U.S. Attorney or ASST.<br>Jeremy G. Epstein<br>791-0036 | ATTORNEYS<br>Bruce Roth<br>20 Vesey St, N.Y.C. 10007<br>tele: (212) 227-4913 |
|---------------------------------------------------------|------------------------------------------------------------------------------|

| Buigues, et al |                | PROCEEDINGS                                                                                                                                    | EXCLUDABLE DELAY |
|----------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| DATE           | (DOCUMENT NO.) |                                                                                                                                                |                  |
| 8-31-76        | ✓              | Filed indictment.                                                                                                                              |                  |
| 9-9-76         | ✓              | Deft. (Atty. present) pleads not guilty. Deft. ordered -F/P and R.O.R. Case assigned to Pollack, J...Haight, J.                                |                  |
| 09-10-76       | ✓              | Filed notice of appearance of atty. Lawrence M. Honig. by Bruce Roth                                                                           |                  |
| 09-23-76       |                | Pre trial before Pollack, J.                                                                                                                   | 2 10-28 E 1      |
| 11-29-76       |                | Trial began with a jury before Judge Pollack.                                                                                                  |                  |
| 11-30-76       |                | Trial cont'd.                                                                                                                                  |                  |
| 12-1-76        |                | Trial cont'd.                                                                                                                                  |                  |
| 12-2-76        |                | Trial cont'd.                                                                                                                                  |                  |
| 12-3-76        |                | Trial cont'd.                                                                                                                                  |                  |
| 12-6-76        |                | Trial cont'd. and concluded. Deft. found guilty on ets. 1,2,3. Bail R.O.R. date for sent. set for 1-17-77 at 10AM. P.S.I. ordered. Pollack, J. |                  |
| 12-10-76       |                | Filed motions of deft. re: Rules 29 and 33 FRCP.                                                                                               |                  |
| 12-13-76       |                | Filed memo-and. on motion docketed 12-10-76. Motion denied. Pollack, J. m/n                                                                    |                  |
| 12-16-76       |                | Filed deft's notice of motion re: rev trial.                                                                                                   |                  |

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1-16-76 Filed one envelope ordered sealed. Pollack, J.  
 1-16-76 Filed Govt's affidavit. re: response to the motion of  
 1-21-76 Filed memo-end. on motion docketed 12-15-76. Motion  
 for new trial denied. Pollack, J. n/a  
 01-17-77 Filed deft's notice of appeal from judgment of  
 1-17-77. Mailed copies

| FIVE YEAR INSTITUTIONAL AGREEMENTS |      |             |           |
|------------------------------------|------|-------------|-----------|
| RECEIPT NUMBER                     | DATE | DESCRIPTION | CO NUMBER |
|                                    |      |             |           |
|                                    |      |             |           |
|                                    |      |             |           |
|                                    |      |             |           |

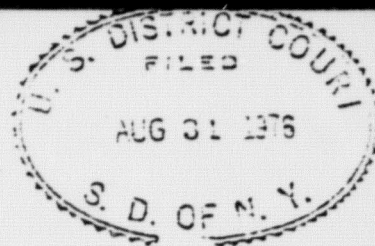








UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- v -

BARTHOLOMEW BUIGUES,  
ANGELO PUIG, IRMA ANES,  
SUSAN HOROWITZ, and JOHN SANMARCO,

Defendants.

INDICTMENT

76 Cr.

76 CRIM. 086

The Grand Jury charges:

INTRODUCTION

1. In enacting Title 42, United States Code, Section 1751 et seq., The National School Lunch Act, the Congress of the United States empowered the United States Department of Agriculture to provide food to children participating in non-profit school lunch programs.

2. Pursuant to Title 42, United States Code, Section 1761, the United States Department of Agriculture is further empowered to administer Special Summer Food Service Programs for Children, which programs were intended to provide food during the summer to children from areas in which poor economic conditions exist.

3. During July and August, 1975, the Special Summer Food Services Program in New York State was administered by the Food and Nutrition Service of the United States Department of Agriculture. The Food and Nutrition Service would and did enter into agreements with private, non-profit organizations, designated as service institutions under the National School Lunch Act, that undertook to operate food service programs for needy children with funds provided from the United States.

RECORDED

AUG 31 1976



4. At all times relevant herein, Youth In Government was a non-profit corporation duly organized and existing under the laws of the State of New York, with its principal office at 2176 Amsterdam Avenue, New York, New York.

5. At all times relevant herein, BARTHOLOMEW BUIGUES, the defendant, was chairman of the board of Youth In Government.

6. In July and August, 1975, Youth In Government, pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Service Program for Children in the Borough of Manhattan in New York City.

7. During July and August, 1975, ANGELO PUIG, the defendant, was employed as the director of the Special Summer Food Service Program of Youth In Government.

8. During July and August, 1975, IRMA ANES, the defendant, was listed on the books of Youth In Government as its "administrative chief."

9. During July and August, 1975, SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, were listed on the books of Youth In Government as "site monitors".

#### COUNT ONE

10. From on or about the 1st day of November, 1974, up to and including the 1st day of January, 1976, in the Southern District of New York and elsewhere, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully,

willfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury known and unknown, to defraud the United States and to commit offenses against the United States, to wit, violations of Title 18, United States Code, Section 287.

OBJECTS OF THE CONSPIRACY

11. It was part of said conspiracy that the defendants would and did agree to defraud the United States and a department and agency thereof, to wit, the United States Department of Agriculture, by causing the United States Department of Agriculture to reimburse Youth In Government for work supposedly performed by certain of its employees in the Special Summer Food Services Program, whereas, in truth and in fact, said employees performed little or no work and were not entitled to the salaries paid them.

12. It was further part of said conspiracy that the defendants would and did make and present to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, "Food and Nutrition Service Reimbursement Vouchers", knowing such claims to be false, fictitious, and fraudulent.

MEANS OF THE CONSPIRACY

13. Among the means by which the defendants would and did carry out the conspiracy were the following:



(a) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire IRMA ANES, the defendant, as "administrative chief" of Youth In Government's Special Summer Food Services Program at a salary of \$200 per week.

(b) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, as "site monitors" of Youth In Government's Special Summer Food Services Program at salaries of \$110 per week.

(c) While supposedly working as "administrative chief" of the Special Summer Food Services Program, IRMA ANES, the defendant, would and did work full time at Querer, Inc., a day care center located at 391 East 149th Street, Bronx, New York.

(d) While supposedly working as a "site monitor" of the Special Summer Food Services Program, SUSAN HOROWITZ, the defendant, would and did work full time at Arawak Consulting Corporation, 210 East 86th Street, New York, New York at an annual salary of \$12,000 per year.

(e) Although listed as employees of Youth In Government, JOHN SAMMARCO, IRMA ANES and SUSAN HOROWITZ, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

(f) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, although aware that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

(g) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, would and did cause a payroll record book to be kept listing the wages and hours of the employees of the Special Summer Food Services Program, in which book it was recorded that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ each worked seven hours per day, five days per week, for the duration of the Special Summer Food Services Program.

(h) In August, 1975, Youth In Government would and did file claims with the United States Department of Agriculture for expenses incurred in operating its Special Summer Food Services Program, which expenses included the salaries of employees.

#### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. In or about January, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at 1920 McGraw Avenue, Bronx, New York, to organize the Special Summer Food Services Program for Youth In Government.

2. In or about May, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program for Youth In Government.



3. On or about the 27th day of June, 1975, SUSAN HOROWITZ filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975, and continuously thereafter up to and including the 16th day of April, 1976, SUSAN HOROWITZ, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86th Street, New York, N.Y.

5. During July and August, 1975, IRMA ANES, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149th Street, Bronx, New York.

6. During July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, wrote weekly salary checks to IRMA ANES, JOHN SAMMARCO, and SUSAN HOROWITZ.

7. In July and August, 1975, IRMA ANES, the defendant, made entries in the payroll book of Youth In Government which stated that IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for August, 1975.



10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

1. Each and every allegation of the Introduction of this Indictment is hereby repeated, realleged, and incorporated by reference in each of Counts Two and Three of this Indictment as though fully set fourth therein.

2. On or about the dates hereinafter set forth, in the Southern District of New York, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent:

| <u>COUNT</u> | <u>DATE</u>     | <u>MONTH COVERED BY VOUCHER</u> |
|--------------|-----------------|---------------------------------|
| 2            | August 22, 1975 | July, 1975                      |
| 3            | August 29, 1975 | August, 1975                    |

(Title 18, United States Code, Sections 287 and 2.)

Joseph M. Delaney  
FOREMAN

Robert B. Fiske, Jr.  
ROBERT B. FISKE, JR.,  
United States Attorney





## CHARGE OF THE COURT

1206

S v Buigues 1  
76 Cr. 864  
11/29/76 2

rk1m 1

(Pollack, M.)

(In open court; jury present.)

THE COURT: Ladies and gentlemen of the jury:

First, I want to thank you for your careful  
attention, which has been clearly exhibited. The case  
is now about to be placed in your hands. You have heard  
the arguments of counsel as to what each believes has  
been established or not established in the evidence. Of  
course, it is for you to say what the evidence was and  
that will guide your deliberations.

The charges against the five defendants, as set  
out in the indictment, consist of three counts against each  
one of the defendants. All are accused of having under-  
taken or aided and abetted the conduct charged as offenses  
herein. I will discuss each count, in turn.

It is important that you keep clearly in mind,  
as you consider this case, what are the charges in the  
indictment. Alleged unearned salaries are the keys to  
the contentions involved herein. I will, therefore, read  
the charges to you from the indictment.

The Grand Jury charges:

"One, in enacting Title 42 of the United States  
Code, Section 1751 and following, the National School Lunch  
Act, the Congress of the United States empowered the United



1 rklm 2

2 States Department of Agriculture to provide food to children  
3 participating in non-profit school lunch programs. Pursuant  
4 to Title 42 of the United States Code, Section 1761, the  
5 United States Department of Agriculture is further empowered  
6 to administer Special Summer Food Services Programs for  
7 children, which programs were intended to provide food  
8 during the summer to children from areas in which poor  
9 economic conditions exist.

10 "During July and August, 1975, the Special  
11 Summer Food Services Program in New York State was admin-  
12 istered by the Food and Nutrition Service of the United  
13 States Department of Agriculture. The Food and Nutrition  
14 Service would and did enter into agreements with private,  
15 non-profit organizations designated as 'service institutions'  
16 under the National School Lunch Act, that undertook to  
17 operate food service programs for needy children with funds  
18 provided from the United States. At all times relevant  
19 herein, Youth In Government was a non-profit corporation  
20 duly organized and existing under the laws of the State of  
21 New York, with its principal office at 2176 Amsterdam  
22 Avenue, New York, New York. At all times relevant herein,  
23 Bartholomew Buigues, the defendant, was chairman of the  
24 board of Youth In Government.

25 "In July and August, 1975, Youth In Government,

1 rklm 3

2 pursuant to agreement with the Food and Nutrition Service  
3 of the United States Department of Agriculture, operated a  
4 Special Summer Food Services Program for children in the  
5 Borough of Manhattan and in New York City.

6 "During July and August, 1975, Angelo Puig, the  
7 defendant, was employed as the director of the Special  
8 Summer Food Services Program of Youth In Government.

9 "During July and August, 1975, Irma Anes, the  
10 defendant, was listed on the books of Youth In Government  
11 as its administrative chief.

12 "During July and August, 1975, Susan Horowitz  
13 and John Sammarco, the defendants, were listed on the books  
14 of Youth In Government as site monitors.

15 "From on or about the first day of November, 1974,  
16 up to and including the first day of January, 1976, in the  
17 Southern District of New York and elsewhere, Bartholomew  
18 Buigues, Angelo Puig, Irma Anes, Susan Horowitz and John  
19 Sammarco, the defendants, unlawfully, willfully and know-  
20 ingly did combine, conspire, confederate and agree together  
21 and with each other and with others to the Grand Jury  
22 known and unknown, to defraud the United States and to  
23 commit offenses against the United States, to wit: violations  
24 of Title 18 of the United States Code, Section 237.

25 "It was part of said conspiracy that the defendants



1 rklm 4

2 would and did agree to defraud the United States and the  
3 department and agency thereof, to wit: the United States  
4 Department of Agriculture, by causing the United States  
5 Department of Agriculture to reimburse Youth In Government  
6 for work supposedly performed by certain of its employees  
7 in the Special Summer Food Services Program, whereas, in  
8 truth and in fact, said employees performed little or no  
9 work and were not entitled to the salaries paid them.

10 "It was further part of said conspiracy that the  
11 defendants would and did make and present to the United  
12 States Department of Agriculture, a department and agency  
13 of the United States, claims upon and against the United  
14 States, to wit: Food and Nutrition Service, reimbursement  
15 vouchers, knowing such claims to be false, fictitious  
16 and fraudulent.

17 "Among the means by which the defendants would  
18 and did carry out the conspiracy were the following:

19 "In June, 1975, Bartholomew Buigues, the defendant,  
20 would and did hire Irma Anes, the defendant, as administra-  
21 tive chief of the Special Summer Food Services Program, at  
22 a salary of \$200 a week.

23 "In June, 1975, Bartholomew Buigues, the defendant,  
24 would and did hire Susan Horowitz and John Sammarco, the  
25 defendants, as site monitors of Youth In Government Special



Summer Food Services Program at salaries of \$110 a week.

"While supposedly working as administrative chief of the Special Summer Food Services Program, Irma Anes, the defendant, would and did work full-time at Querer, Inc., a day care center located at 391 East 149 Street, Bronx, New York, while supposedly working as a site monitor for the Special Summer Food Services Program.

"Susan Horowitz, the defendant, would and did work full-time at Arawak Consulting Corporation, 210 East 86 Street, New York, New York, at an annual salary of \$12,000 per year.

"Although listed as employees of Youth In Government, John Sammarco, Irma Anes and Susan Horowitz, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

"In July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, although aware that John Sammarco, Irma Anes and Susan Horowitz, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

"In July and August, 1975, Bartholomew Buigues and Angelo Puig, the defendants, would and did cause a payroll record book to be kept, listing the wages and hours of



1 rkln 6

2 the Special Summer Food Services Program, in which book it  
3 was recorded that John Sammarco, Irma Anes and Susan Horowitz  
4 each worked seven hours per day, five days per week, for  
5 the duration of the Special Summer Food Services Program.

6 "In August, 1975, Youth In Government would and  
7 did file claims with the United States Department of  
8 Agriculture for expenses incurred in operating its Special  
9 Summer Food Services Program, which expenses included the  
10 salaries of employees."

11 The indictment, then, contains a recitation of  
12 what is known as "overt acts," which I will read to you  
13 a little later in these instructions.

14 I have read to you Count 1, thus far. Counts  
15 2 and 3 read as follows:

16 The Grand Jury further charges:

17 "Each and every allegation of the introduction  
18 of this indictment is hereby repeated, realleged and  
19 incorporated by reference in each of Counts 2 and 3 of  
20 this indictment as though fully set forth therein.

21 "On or about the dates hereinafter set forth in  
22 the Southern District of New York, Bartholomew Buigues,  
23 Angelo Puig, Irma Anes, Susan Horowitz and John Sammarco,  
24 the defendants, unlawfully, willfully and knowingly would  
25 and did make and present and cause to be made and presented

1 rklm 7

2 to the United States Department of Agriculture, a department  
3 and agency of the United States, claims upon and against  
4 the United States, to wit: Food and Nutrition Service  
5 reimbursement vouchers, knowing such claims to be false,  
6 fictitious and fraudulent."

7 ' In Count 2, the date of that presentation was  
8 August 22, 1975, for the month covered by the voucher, July,  
9 1975; and in Count 3, the presentation was on August 29,  
10 1975, the month covered by that voucher, August, 1975.

11 As you have heard from the indictment -- and I  
12 should tell you that a separate crime or offense is charged  
13 against each of the defendants in each of the three counts  
14 of the indictment -- each offense and the evidence pertaining  
15 to it should be considered separately by the jury. The  
16 fact you may find all or some of the accused guilty or not  
17 guilty of one of the offenses charged, should not control  
18 your verdict as to any other offense charged against any  
19 of the defendants. It is your duty to give separate personal  
20 consideration to the case of each individual defendant.  
21 When you do so, you should analyze what the evidence in the  
22 case shows with respect to that individual, leaving out  
23 of consideration, entirely, any evidence omitted solely  
24 against some other defendant or defendants. Each defendant  
25 is entitled to have his or her case determined from evidence



rk1m 8

as to his or her own acts and statements and conduct, and any other evidence in the case which may be applicable to him or to her.

Now, in more detail, I turn to the first count, which is the so-called "conspiracy count."

The first count of this indictment is a conspiracy count. Before you may convict any defendant under this count, the following essential elements must be established beyond a reasonable doubt by the Government:

First, you must be satisfied that the conspiracy charged did in fact exist. That is, that sometime between November 1, 1974 and January 1, 1976, a scheme, an agreement existed between defendants on trial and any other co-conspirator, whether or not on trial or named in the indictment, to defraud the Government and one of its agencies, by claims for reimbursement of unearned salaries in the Special Food Services Program.

Second, the Government must establish a specific intent of the defendant under consideration to violate the substantive statute; that is, the law that I have read to you that applied; that is, to defraud the United States or to submit to the United States Department of Agriculture, false, fictitious, fraudulent claims.

Third, that the defendant under consideration,

1 knowingly and willfully associated himself or herself with  
2 a conspiracy; and

3  
4 Fourth, that one of the conspirators, anyone,  
5 knowingly committed at least one or more of the overt acts  
6 set forth in the indictment at or about the time and place  
7 alleged.

8 You must first consider whether, in fact, the  
9 scheme or conspiracy charged in this indictment existed.  
10 What is a conspiracy? A conspiracy is a combination or  
11 scheme or agreement of two or more persons. by concerted  
12 action, to accomplish a criminal or unlawful purpose or  
13 some purpose not in itself criminal or unlawful, by criminal  
14 or unlawful means.

15 The gist of the crime of conspiracy is the  
16 unlawful combination or agreement ~~scheme~~, to violate  
17 the law. Whether or not the defendant accomplished what it  
18 is alleged the defendant conspired to do, is immaterial to  
19 the question of guilt or innocence of conspiracy. The  
20 crime of conspiracy relates to scheming to do the unlawful  
21 thing.

22 A conspiracy has sometimes been called "a partner-  
23 ship in criminal purpose in which each member becomes the  
24 agent of every other member." However, to establish a  
25 conspiracy, the Government is not required to show that two



1 rklm 10

2 or more persons sat around a table and entered into a solemn  
3 compact, orally or in writing, stating that they have  
4 formed a conspiracy to violate the law, setting forth  
5 details of the plan, the means by which the unlawful project  
6 is to be carried out, or the part to be played by each  
7 conspirator. Indeed, it would be extraordinary if there  
8 were such a formal document or specific oral agreement.  
9 Your common sense will tell you that, when people in fact  
10 undertake to enter into a criminal conspiracy, much is  
11 left to the unexpressed understanding.

12           Conspirators usually do not reduce their agree-  
13 ment to writing or acknowledge them before a notary public,  
14 nor do they publicly broadcast their plans. From its very  
15 nature, a conspiracy is almost always characterized by  
16 secrecy, rendering detection difficult.

17           Thus, it is sufficient if two or more persons  
18 in any manner, through any contrivance impliedly or tacitly,  
19 come to a common understanding to violate the law. Express  
20 language or specific words are not required to indicate  
21 assent or attachment to a conspiracy. On the other hand,  
22 proof concerning the accomplishment of the object of a  
23 conspiracy may be the most persuasive evidence of the  
24 actual existence of the conspiracy itself; and to simplify  
25 this a bit more, success of the venture is the best proof

1 rklm 11

2 of the agreement.

3 In determining whether there has been an unlawful  
4 scheme or agreement, you may judge acts and conduct of the  
5 alleged members of the conspiracy which are done to carry  
6 out an apparent criminal purpose. The old adage, "Actions  
7 speak louder than words," is applicable here. Usually,  
8 the only evidence available is that of disconnected acts  
9 on the part of the alleged individual conspirators, which  
10 acts, however, when taken together in connection with each  
11 other, and with the reasonable inferences flowing therefrom,  
12 show a conspiracy or agreement to secure a particular  
13 result as satisfactorily and conclusively as more direct  
14 proof.

15 If, upon such consideration of all the evidence,  
16 direct and circumstantial, you find beyond a reasonable  
17 doubt that the minds of the alleged conspirators met in an  
18 understanding way and that they agreed, as I have explained  
19 a conspiratorial agreement to you, to work together in  
20 furtherance of the unlawful scheme alleged in the indict-  
21 ment, then proof of the existence of a conspiracy has been  
22 established.

23 In this connection, it is not necessary for the  
24 Government to prove the success, nor completion of the  
25 object of the conspiracy. As the conspiracy is basically



1 rkln 12

2 the agreement to violate the law, it may exist even though  
3 the final objectives were never accomplished.

4 The period of time embraced by the indictment  
5 for the existence of the alleged conspiracy runs from on  
6 or about November 1, 1974 to January 1, 1976. It is not  
7 necessary for the Government to prove that the conspiracy  
8 started and ended on those specific days. It is sufficient  
9 if you find that, in fact, the conspiracy was formed and  
10 that it existed for some substantial time within the period  
11 set forth in the indictment and that any one of the several  
12 acts mentioned in the overt act section of the indictment  
13 was committed during that period.

14 The indictment charges that the conspiracy in  
15 question had two unlawful objects or goals:

16 The first was to defraud the United States and  
17 one of its departments, the Department of Agriculture, by  
18 causing that department to reimburse an organization called  
19 "Youth In Government" for work supposedly performed by  
20 its employees that had not been in fact performed.

21 The second object of the conspiracy, charged in  
22 the indictment, was to violate Title 18 of the United  
23 States Code, Section 287, which makes a crime the filing  
24 of false, fictitious and fraudulent claims against the  
25 United States.



1 rklm 13

2 It is not necessary that the Government prove  
3 that there was a conspiracy to accomplish both of those  
4 objects. The Government will have sustained its burden of  
5 proof on the conspiracy count if it has proved beyond a  
6 reasonable doubt that there was a conspiracy to accomplish  
7 at least one of these illegal goals.

8 In order to find there was a conspiracy to defraud  
9 the United States, you may, but need not find that the  
10 Government lost money or was intended to lose money as  
11 the result of the conspiracy. Defrauding in this connection  
12 means interfering with, or obstructing one of the lawful  
13 functions of the United States Government -- in this case,  
14 the function of the United States Department of Agricul-  
15 ture, in administering the Special Summer Food Services Program--  
16 by deceit, craft or trickery or by means that are dis-  
17 honest. A conspiracy that included as one of its goals,  
18 submission of fraudulent or false information to a depart-  
19 ment of the United States, such as the Department of  
20 Agriculture, in a matter within its jurisdiction, would  
21 be a conspiracy to defraud the United States.

22 Once satisfied that the conspiracy charged  
23 existed, you must ask yourself who its members were. In  
24 deciding whether a defendant was a member of the conspiracy,  
25 you should consider whether on all the evidence, the



defendant knowingly and purposely entered the conspiracy.

In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with an awareness of at least some of the basic aims and purposes of the conspiracy? Knowledge may be inferred from a defendant's conduct, from his or her acts, from his or her statements and from all the surrounding circumstances. It is not necessary that the defendant be fully informed as to the details of the scope of the conspiracy in order to justify the inference of knowledge on his or her part. To have guilty knowledge, the defendant need not know the full extent of the conspiracy and all of its activities and actors.

I want to caution you that a defendant's mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that a defendant participate at some time in the course of the scheme, not necessarily from the inception, but any time during its course, with knowledge of at least some of the purposes of the conspiracy and with specific intent to aid and participate in the accomplishment of those unlawful



1 rklm 15

2 ends.

3           Once you have found a conspiracy to exist and a  
4 defendant to have knowingly participated in it, the extent  
5 of his or her participation has no bearing on the guilt  
6 or innocence of that defendant. The guilt of a conspirator  
7 is not measured by the extent or duration of his or her  
8 participation. Even if a defendant participated in it to  
9 a degree more limited than that of another alleged co-  
10 conspirator, that defendant is equally culpable so long as  
11 that defendant was in fact a conspirator.

12           As I have already mentioned, the fourth element  
13 of the crime of conspiracy is that an overt act, to effect  
14 the objective of the conspiracy, be committed by at least  
15 one of the co-conspirators.

16           An overt act is any step, action or conduct out  
17 in the open. That is what overt means; acts which are taken  
18 to achieve or further the objective of the conspiracy.

19           The alleged overt acts as charged in the indict-  
20 ment are as follows:

21           In furtherance of said conspiracy and to effect  
22 the objects thereof, the following overt acts, among others,  
23 were committed in the Southern District of New York:

24           1: In or about January, 1975, Bartholomew  
25 Buiges and Angelo Puig, the defendants, held a meeting at



1 rkml 16

2 1920 McGraw Avenue, Bronx, New York, to organize a Special  
3 Summer Food Services Program for Youth In Government.

4 Another overt act marked "2," in or about May,  
5 1975, Bartholomew Buigues and Angelo Puig, the defendants,  
6 held a meeting at The Latin Beat, 508 Van Nest Avenue,  
7 Bronx, New York, to organize further the Special Summer  
8 Food Services Program in Youth In Government.

9 3. On or about the 27th day of June, 1975, Susan  
10 Horowitz filled out an application for employment in the  
11 Special Summer Food Services Program of Youth In Government.

12 4. From on or about the 7th day of July, 1975  
13 and continuously thereafter up to and including the 16th  
14 day of April, 1976, Susan Horowitz, the defendant, was  
15 employed as a staff associate at Arawak Consulting Corpora-  
16 tion, 210 East 86 Street, New York.

17 5. During July and August, 1975, Irma Anes, the  
18 defendant, was employed as a bookkeeper and administrative  
19 assistant at Querer, Inc., 391 East 149 Street, Bronx, New  
20 York.

21 6. During July and August, 1975, Bartholomew  
22 Buigues and Angelo Puig, the defendants, wrote weekly  
23 salary checks to Irma Anes, John Sammarco and Susan  
24 Horowitz.

25 7. In July and August, 1975, Irma Anes, the defendant,



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made entries in the payroll book of Youth In Government, which stated that Irma Anes, Susan Horowitz and John Sammarco had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, Irma Anes, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service reimbursement voucher for the Special Summer Food Services Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, Irma Anes, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service reimbursement voucher for the Special Summer Food Services Program of Youth In Government for August, 1975.

10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

As I have already indicated, it is not necessary for the Government to prove that each member of the conspiracy committed or participated in any particular overt act of the ten which I have read to you.

Also, the Government is not required to prove every one of the ten overt acts charged. It is sufficient



1 rk1m 18

2 if the Government proves the commission of at least one,  
3 any one of the acts alleged to have occurred charged as  
4 overt acts, at or about the time alleged.

5 When people enter into a conspiracy to accomplish  
6 an unlawful end, they become agents for one another in  
7 carrying out the conspiracy. Hence, the acts or declara-  
8 tions of one, in the course of the conspiracy and in  
9 furtherance of the common purposes, are deemed to be the  
10 acts of all, and all are responsible for such acts.

11 Accordingly, if you find, in accordance with  
12 these instructions, that the alleged conspiracy existed  
13 and the defendant or alleged co-conspirators were partici-  
14 pants in it, then acts done and statements and declarations  
15 made in furtherance of the conspiracy by the persons found  
16 by you to have been members of the conspiracy, may be  
17 considered against the defendant whom you find was a  
18 member, even though such acts or deliberations were made  
19 in the absence and without the knowledge of that defendant.

20 It is important to note that this principle  
21 applies only to the acts and declarations done or made  
22 during the continuance of the conspiracy and in furtherance  
23 thereof; that is, to carry out an unlawful objective or  
24 purpose of the conspiracy. It does not apply to acts or  
25 declarations which do not have these characteristics.

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The defendants are charged in Counts 2 and 3 with the making and presenting of false claims against the United States. Count 1 is scheming to do so. Counts 2 and 3 were the actual making and presenting of false claims against the United States. These Counts 2 and 3 charge a violation of Title 18, United States Code, Section 287, which reads as follows:

"Whoever makes or presents to any person or officer of the United States or to any department or agency thereof any claim upon or against the United States or any department or agency thereof, knowing such claim false, fictitious or fraudulent, commits a crime."

Before you may convict any defendant on either, Count 2 or 3, you must be satisfied beyond a reasonable doubt of each of the following essential elements as to him or her:

1. That on or about the date set forth in each count, the defendant whom you are considering made or presented or aided and abetted another or others in the making or presentation of a claim against the United States to a department or agency thereof.

2. That the claim was false, fictitious or fraudulent.

3. That the defendant you are considering knew



1 rklm 20

2 the claim to be false, fictitious or fraudulent.

3 4. That the defendant acted knowingly, willfully  
4 and unlawfully.

5 With respect to the first essential element, that  
6 the defendant made or presented a claim against the United  
7 States through a department or agency of the United States,  
8 the language describing this element is largely self-  
9 explanatory. To make or to present is simply to cause to  
10 be filed or to file a claim in a manner that would normally  
11 cause the department or agency to act on that claim.

12 The claims referred to in Counts 2 and 3 are  
13 Food and Nutrition Services reimbursement vouchers. You  
14 have heard testimony that these vouchers are the means by  
15 which sponsors participating in the Special Summer Food  
16 Services Program seek reimbursement for their expenses  
17 incurred in running the program. Although there appears  
18 to be no dispute on this point, you must nevertheless find  
19 beyond a reasonable doubt that these vouchers are claims  
20 against the United States.

21 You must also find that these claims were made  
22 or presented to an agent or department of the United  
23 States. I charge you as a matter of law that the United  
24 States Department of Agriculture is a department and agency  
25 of the United States.

1 rk1m 21

2 In order to convict a defendant under either  
3 Count 2 or Count 3, you must find that the Food and Nutrition  
4 Service reimbursement vouchers were false, fictitious or  
5 fraudulent, and that the defendant you are considering  
6 knew that to be so.

7 The word "false," as used in the indictment,  
8 means the claim was untrue when made, and was then known  
9 to be untrue by the person making it or causing it to be  
10 made.

11 The word "fictitious" means that the claim  
12 contained matters that were contrived, invented or imaginary.

13 The word "fraudulent" means that the claim was  
14 falsely made and with the purpose of intent to deceive.

15 Before you can convict any defendant of either  
16 count, you must find beyond a reasonable doubt that he or  
17 she acted knowingly and willfully, with the specific intent  
18 to violate the law.

19 Now, an act is done knowingly if it was done  
20 voluntarily and purposely and not because of mistake,  
21 accident, mere negligence or any other innocent reason.

22 An act is willful if it is done knowingly, will-  
23 fully, and with a bad motive or purpose.

24 To establish specific intent, the Government  
25 must prove that the defendant knowingly did an act that the



1 rk1m 22

2 law forbids or knowingly failed to do any act which the law  
3 requires, purposely intending to violate the law.

4 Knowledge and willfullness of a defendant need  
5 not be proved by direct witnesses. Like any other facts in  
6 issue, it may be established by circumstantial evidence.

7 Here, as in other phases of the case, the signifi-  
8 cant fact is the defendant's state of mind. It is obviously  
9 impossible to prove the operation of a defendant's mind  
10 because you can't look into a person's mind and see what  
11 his intentions are or were, but the proof of the circum-  
12 stances surrounding the transaction may well supply an  
13 adequate and convincing basis or a finding that the defendant  
14 acted willfully.

15 The actions of a person must be set in their time  
16 and place, just as the full meaning of a word is commonly  
17 understood only in its relation to other words in a sentence  
18 or its context. So, the meaning of a particular act or  
19 conduct may depend on the circumstances in which it is  
20 found or surrounding it.

21 In determining this issue, you are entitled to  
22 consider any statements made and acts done or omitted by  
23 the defendant and all facts and circumstances in evidence  
24 which may aid you in determining his or her state of mind.

25 With respect to Counts 2 and 3, you will recall

1 rklm 23

2 that I had used the term "aiding and abetting." It is not  
3 necessary that the Government prove that each defendant  
4 personally did each act charged. For example, it is  
5 unnecessary to sustain a conviction under Count 2 or Count  
6 3 to show that a defendant actually participated personally  
7 in the preparation of the reimbursement vouchers or in the  
8 filing of them with the Department of Agriculture. A  
9 Federal statute provides:

10 "Whoever commits an offense against the United  
11 States, or aids, abets, counsels, commands, induces or  
12 procures its commission, is guilty of a crime."

13 While there is no precise rule as to what acts  
14 constitute aiding and abetting, it is enough that a defend-  
15 ant in some manner associated himself or herself with the  
16 illegal venture; that such defendant participated in it,  
17 as something that he or she wished to bring about, or that  
18 he or she sought by his or her actions to make it succeed.

19 One who aids or abets the commission of a crime  
20 is equally guilty as the person who actually and physically  
21 committed it.

22 It is not sufficient to show mere knowledge of  
23 a false filing to find that a defendant was an aider and  
24 abettor. You must find that a defendant knowingly and  
25 intentionally participated in activities such as the receipt



1 of money consciously taken for work not performed which,  
2 when included on the claims filed with the Government,  
3 caused the reimbursement vouchers to be inflated, false,  
4 fictitious and fraudulent.  
5

6 If you find such participation and such receipt  
7 of unearned salaries by a defendant with knowledge and  
8 intent, that payment or reimbursement would be made or  
9 sought from the Government or its agency through reimburse-  
10 ment vouchers which thus were inflated, false, fictitious  
11 and fraudulent, you may find that defendant guilty, as an  
12 aider and abettor of the making and filing of the false  
13 claims.

14 A person may be guilty of causing a false claim  
15 to be presented to the United States, even though he uses  
16 an intermediary, innocent or not, to make and actually  
17 pass on the claim to the United States.

18 I now want to turn to some general rules applicable  
19 to trials, criminal trials, and the trial of this case:

20 In order to return a verdict of "not guilty"  
21 or "guilty" as to any defendant on any of the three counts  
22 in this case, each juror must agree thereto. Such a  
23 verdict must be unanimous on the count which you are con-  
24 sidering and as to the defendant you are considering, and  
25 must represent each juror's individual judgment.

1  
2 It is your exclusive function to determine the  
3 facts on the basis of your consideration of the evidence.  
4 On the other hand, it is your duty to accept my instructions  
5 as to what the law is, and that must be followed in this  
6 case. You may not disregard the law or attempt to mitigate  
7 it or rewrite it. Applying these instructions on the law  
8 to the facts as you find them, you will decide whether or  
9 not the defendant on trial before you is guilty of the  
10 charges that have been made against him or her or any of  
11 them.

12 Your recollection of the facts is what counts  
13 here and not the recollection of counsel or even my recollec-  
14 tion. It is for you to determine the weight you will give  
15 to the evidence, the credibility you will extend to the  
16 witnesses who testified and the reasonable inferences that  
17 are to be drawn from the evidence that has been received.

18 As I have indicated earlier, an indictment defines  
19 the charges against the defendant as to which the evidence  
20 at the trial must be addressed. An indictment is not  
21 evidence that a crime has been committed and no inference  
22 of any kind may be drawn from its existence.

23 Each defendant pleaded "not guilty" to the  
24 indictment. That means that the Government has the burden  
25 of proving guilt beyond a reasonable doubt with respect to



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that defendant as to each element of the claims that that defendant is accused of having committed. The defendant does not have to prove that he or she is not guilty. He or she does not have to submit any evidence on the subject of his or her innocence or any evidence at all if he or she doesn't want to. A defendant is presumed to be innocent under our concept of the law and that presumption continues throughout the trial and through your deliberations. It is only overcome if and when you have determined on the basis of your resolution of the facts, that guilt was established beyond a reasonable doubt on each element of the crime charged that you are considering.

By "reasonable doubt," we just do not mean mathematical certainty or proof beyond all possible doubt. We mean a doubt which is sufficient to cause a prudent person to hesitate to act in a matter of importance to himself or herself. If the evidence, which you believe is **such as** would induce a prudent person to act without reservation in a matter of importance to himself or herself, then you may say, you have been convinced beyond a reasonable doubt. A reasonable doubt is not a speculative doubt. It is not caprice or whim. It is not a guess. It must be, as the words used say, a reasonable doubt.

If, on the other hand, your mind is wavering



1 or uncertain to the point where you have a doubt which  
2 would cause a prudent person to hesitate in a matter of  
3 importance to him or her, then you have not been convinced  
4 beyond a reasonable doubt.  
5

6 In this case, the evidence produced has been  
7 both of direct and indirect or circumstantial character.  
8 The Government contends that its evidence establishes each  
9 defendant's guilt on each charge beyond a reasonable doubt.  
10 Each defendant contends that no evidence has overcome the  
11 presumption of his or her innocence and, at least, there is  
12 a reasonable doubt as to his or her guilt.

13 You will apply to all the evidence the same  
14 standard of proof to satisfy yourself of the guilt of the  
15 defendant beyond a reasonable doubt or else you must acquit  
16 that defendant. You must make your own evaluation of the  
17 evidence, including the testimony given by each of the  
18 witnesses, and determine the credibility which you choose  
19 to give to such evidence.

20 In weighing the testimony of witnesses, you may  
21 consider their relationship, if any, to the parties involved,  
22 namely, to the Government or to the defendant, and any bias  
23 against or interest in the parties or in the outcome of  
24 the case; the witness' manner while he or she was testifying,  
25 that is, the witness' candor, intelligence, whether the



1 rklm 28

2 witness equivocated or whether the witness was frank and  
3 straightforward; the extent to which the witness has been  
4 corroborated or contradicted by other credible evidence or  
5 circumstances or inconsistencies in the testimony.

6 Interest, as you know, creates a motive for  
7 falsely testifying. The greater the interest, the stronger  
8 the motive, and the defendant's interest in the result of  
9 a trial is of a character possessed by no other witness.

10 If you believe a witness has willfully testified  
11 falsely before you, you are privileged to disregard his  
12 or her testimony or you don't have to. A man or woman may be  
13 lying about part of what he or she says and may be telling  
14 the truth about other parts. It is for you to decide, after  
15 you have scrutinized the evidence and weighed the demeanor  
16 of the witnesses.

17 In appraising any defendant's credibility, you  
18 may take his or her interest in the outcome of the situation.  
19 However, it by no means follows that simply because a  
20 person has a vital interest in the end result, that he or  
21 she is not capable of telling a truthful and straightforward  
22 story. It is for you to decide to what extent, if at all,  
23 the interest of a defendant has colored that defendant's  
24 testimony.

25 You have heard testimony that the defendants,



1  
2 John Sammarco and Angelo Puig, made certain statements to  
3 Government agents. If you find that either of these defend-  
4 ants did make the statements accorded to them, then you  
5 may give those statements such weight as you believe they  
6 deserve under all of the facts and circumstances which  
7 were brought out in the evidence.

8           There has been testimony that the defendants,  
9 John Sammarco and Angelo Puig, also made a number of  
10 statements to Government agents tending to show their  
11 innocence. There has also been testimony that these state-  
12 ments were false.

13           I charge you that exculpatory statements, state-  
14 ments to excuse one or exonerate one, when shown to be  
15 false, are circumstantial evidence of guilty consciousness  
16 and have independent probative force and are to be considered  
17 along with all the other facts and circumstances in evidence  
18 in respect to that defendant.

19           Certain evidence was given to you of an alleged  
20 incident allegedly pertaining to Mr. Puig and of an alleged  
21 incident allegedly pertaining to Mr. Buigues, both referred  
22 to as "threats," solely for identification of the subject.  
23 That testimony has no relevance to any defendant except,  
24 respectively, to Mr. Puig and to Mr. Buigues, and was  
25 admitted solely against the defendant named in such evidence



1 rklm 30

2 to be considered solely as against him, together with all  
3 the other facts and circumstances and evidence relating  
4 to that defendant.

5 If you credit the testimony as to such an incident,  
6 it may, if you decide it had that effect, be evidence of  
7 a consciousness of guilt, to be considered together with  
8 all the other facts and circumstances and evidence, solely  
9 for that purpose and solely in relation only to the particular  
10 defendant referred to.

11 The defendants Horowitz, Puig and Buigues, you  
12 will recall, introduced evidence tending to establish their  
13 good reputation in their community and profession, prior  
14 to and subsequent to the indictment in this case. Such  
15 evidence may indicate to you that it is improbable that  
16 a person of good character would commit the crime charged  
17 here. Therefore, the jury should consider this evidence  
18 along with all the other evidence in the case, in determining  
19 the guilt or non-guilt of the defendants.

20 The circumstances may be such that evidence of  
21 good character alone may create a reasonable doubt of the  
22 defendant's guilt, although without it, the other evidence  
23 may be convincing. However, evidence of good reputation  
24 should not constitute an excuse to acquit the defendant if  
25 the jury, after weighing all the evidence including the



1 rklm 31

2 evidence of good character, is convinced beyond a reasonable  
3 doubt that the defendant is guilty of the crime charged.

4 The law recognizes two types of evidence: direct  
5 and circumstantial, either of which may be sufficient to  
6 convince the jury, providing all the evidence is proved  
7 beyond a reasonable doubt.

8 Direct evidence, of course, is evidence given by  
9 a witness who is present at a conversation or the commission  
10 of an act and testifies as to what he or she saw or what  
11 he or she heard or discovered, what he or she knows of her  
12 own or his own knowledge; something which comes to him or  
13 her by virtue of the senses of sight or sound or smell or  
14 touch.

15 Circumstantial evidence is, as most of you know,  
16 evidence that tends to prove a disputed fact by proof of  
17 other facts in evidence, which has a logical tendency to  
18 lead one's mind to conclude that a fact in issue actually  
19 exists. Circumstantial evidence should not be given any  
20 less weight because it is circumstantial rather than direct.

21 A convenient illustration of circumstantial  
22 evidence that I give to juries is this:

23 Suppose, at the time you came into court this  
24 morning the sun was shining and there were no clouds in the  
25 sky and when you came into this trial courtroom the shades



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1 were drawn and the blinds were down, so you couldn't see  
2 outside, and assume you hadn't been outside since you came  
3 in, and pretty soon somebody walked through that door into  
4 the courtroom with a dripping umbrella and raincoat. When  
5 you left outside it was clear, but when this person came in  
6 with the dripping umbrella and raincoat, something may have  
7 happened outside. You would be entitled to infer from the  
8 circumstances, that there is a dripping umbrella and rain-  
9 coat and that it is raining outside, even though you do not  
10 see the rain outside. Thus, circumstantially, you infer  
11 from one fact, the fact being the dripping raincoat and  
12 umbrella, some other manner, that is, that it is raining  
13 outside.  
14

15 Under your oath, you can't allow consideration  
16 of the punishment that might be inflicted upon a defendant  
17 to influence your judgment in any way or in any sense  
18 enter into your deliberation. The decision as to what type  
19 of sentence, if any, should be imposed, is solely my  
20 responsibility. That rests exclusively on me in the event  
21 of a conviction. Your function is to weigh the evidence  
22 in the case and to determine whether the defendant engaged  
23 in criminal conduct described in the statutes and whether  
24 he or she is guilty or not guilty of a particular count  
25 you are considering. Your decision must be based solely on

1 rklm 33

2 the evidence and the law and you must not be confused by  
3 any argument which takes you away from what the case  
4 before you is. You must not be influenced by any assumptions,  
5 conjecture or sympathy in the case, either for the defend-  
6 ant or any member of his or her family or otherwise.

7 In short, you are expected to use your common  
8 sense and general experience in evaluating the evidence.

9 Your verdict in this case, when you get ready to  
10 report it, will be on each count and with respect to each  
11 defendant, separately, and it will be either "guilty" or  
12 "not guilty"; and your verdict will be announced by Mr.  
13 Johnson, who sits in the first seat, and who will act as  
14 your spokesman. Your spokesman will be provided with a  
15 copy of the indictment and with pencil and paper, should  
16 you wish to communicate with the Court. Please do not  
17 communicate with anyone, even me, except in writing, and  
18 have the writing signed or initialled by your spokesman with  
19 his name or initials; and do not communicate with anyone,  
20 not even me, on how you stand, unless it is to say that you  
21 are unanimous on the person and the count mentioned.

22 If you desire any of the exhibits, these will be  
23 sent to you in the jury room upon request. If you want  
24 any testimony read, that can be done also. It isn't easy  
25 to find the testimony in those stenotype notes, so the more



specific you are, the quicker we can accommodate any request you do make.

I have now concluded my instructions, but I want to take a moment to talk to the lawyers. They may wish to call to my attention something that I may have overlooked or on something as to which I have misspoken, so if you will just relax in your seats for a moment, I will talk to them and come back to you.

(At the side bar.)

THE COURT: Are there any exceptions or requests on the part of the Government?

MR. EPSTEIN: There are none.

THE COURT: Any exceptions or requests on the part of your clients, Mr. Hammer?

MR. HAMMER: No, sir.

THE COURT: Are there any exceptions or requests on the part of your client, Mr. Honig?

MR. HONIG: There are no exceptions or requests.

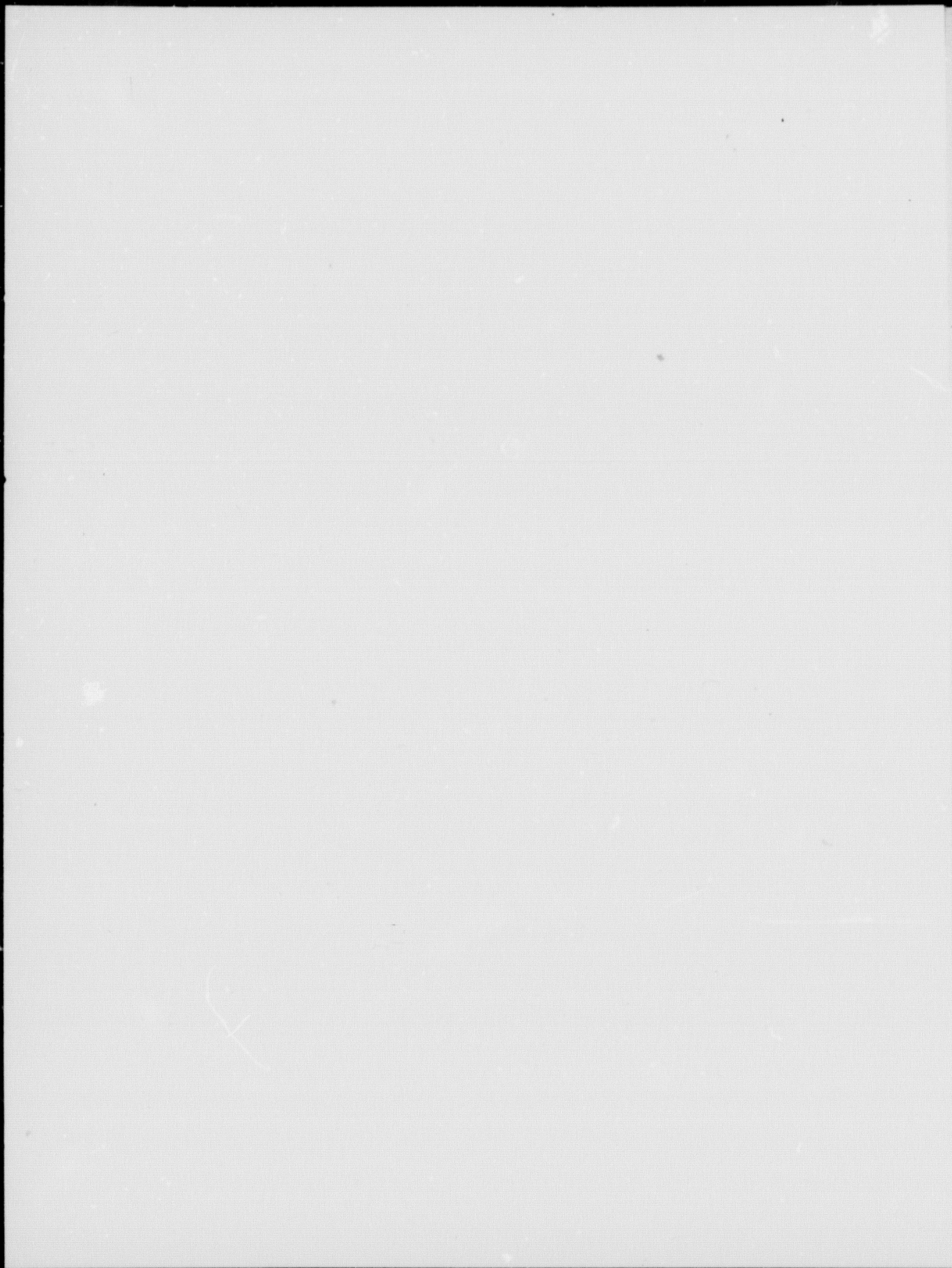
THE COURT: Are there any exceptions or requests on the part of your client, Mr. Flynn?

MR. FLYNN: Yes, your Honor. I respectfully except to the Court's charge on the issue of specific intent, and as I read it, it did not cover the issue.

I respectfully except to taking exception in the







United States of America vs.

United States District Court for

DEFENDANT

SUSAN HOROWITZ

THE SOUTHERN DISTRICT OF NEW YORK

DOCKET NO.

76 CR. 864 MP

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government  
the defendant appeared in person on this date

J. Epstein, AUSA

MONTH DAY YEAR  
JAN. 17, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Lawrence M. Honig

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING &  
JUDGMENT

There being a ~~verdict~~/verdict of  
☐ NOT GUILTY. Defendant is discharged  
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent. (T. 18, U.S.C., Sections 287 and 2.); conspiracy so to do. (T. 18, U.S.C., Section 371.)**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~the~~ **imposition of sentence of imprisonment only on each of counts 1, 2 and 3 is suspended. Defendant is placed on probation for a period of ONE(1) YEAR on each of counts 1, 2 and 3 to run concurrently with each other and subject to the standing probation order of this Court.**

-AND-

**FINED \$1,000. to cover all 3 counts. Fine to be paid or the defendant is to be committed until the fine is paid or she is otherwise discharged according to law. Fine to be paid in four(4) monthly installments of \$250. each commencing January 24, 1977.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

Defendant advised of her right to appeal.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

TON POLLACK

Date

JAN. 17, 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal for the Southern District of New York.

CERTIFIED AS A TRUE COPY

THIS DATE JAN. 17, 1977

By [Signature] DEPUTY





Q Is there any regulation of the United States Department of Agriculture that requires particular or specific work hours in a sponsoring organization participating in the Summer Lunch Program in 1975?

A If the cost of these is to be claimed, there must be supporting information for it, if I understand your question correctly.

Q Let me put the question again.

THE COURT: He is asking you whether anybody is required to work any period of time, and you are answering him on a different level. You are saying to him: If he is making a claim for the services, then you check it out.

Is that what you are saying?

THE WITNESS: This is correct.

A As far as length of time requirement, no. He can work any number of hours.

Q If one were assigned as a site monitor in the employ of a sponsoring organization in the Summer Youth Program of 1975 at a weekly salary of \$110 and one can perform that function well and properly within three hours, you would have no objection to that, would you, in auditing the claim?

A If this is what was claimed, no, sir.



1  
2 Q Upon the claim, is there any provision to  
3 delineate or state the number of hours or days worked,  
4 sir?

5 A No, sir.

6 Q On the application for participation in the  
7 1975 Summer Lunch Program, there is a schedule, is there  
8 not, for job title and salary?

9 A Yes, sir. That includes estimated number of  
10 hours that will be worked.

11 Q Do you have the application of Youth In Govern-  
12 ment for the Summer Program 1975?

13 A No, sir, I don't.

14 Q Was there any numbers inserted in that schedule,  
15 Mr. Spencer?

16 A I do not remember.

17 Q In the agreement between the United States  
18 Department of Agriculture and the sponsoring organization,  
19 Youth In Government, in 1975, is there any representation  
20 made as to the jobs or hours or days stated, Mr. Spencer?

21 A To the best of my knowledge, no, that is not a  
22 part of the agreement.

23 Q Did the United States Department of Agriculture  
24 require in 1975 the filing of a proposed budget by the  
25 sponsoring organizations participating, Mr. Spencer?

for employees indicated in Column B.

What does that refer to, anyway? Can you tell us?

A Column A is the title of the person, such as monitor, program director, et cetera. Number of personnel in their position, of course, some titles you would have one. Monitors you may have more than one.

Column B, the amount of time they spent doing this job and it also shows whether their time is volunteer or paid time.

Column D is the salary per hour and Column E briefly explains the duties.

Q That portion is not completed upon the original, is that correct?

A That is right.

Q And it refers to an attachment?

A That is correct.

Q Does not Exhibit D cover the job titles and salaries, Mr. Spencer?

A Yes, sir, it would cover those two items.

Q Is there any regulations of the U. S. Department of Agriculture for the year 1975 that stated that a certain number of hours must be spent by each employee at a certain rate for a certain job title?



1  
2 A No.

3 THE COURT: We have had that information. It is  
4 a question of law in any event.

5 MR. HAMMER: Nothing further.

6 THE COURT: Any questions, Mr. Honig?

7 CROSS-EXAMINATION

8 BY MR. HONIG:

9 Q Mr. Spencer, what you have before you are long,  
10 green work sheets.

11 Do I take it, that is the working clinical  
12 data that you used in your own handwriting in auditing  
13 Youth In Government?

14 A Some of it is in my own handwriting. Some of it  
15 is in the handwriting of other personnel that were working  
16 for me.

17 Q But it is a creation that is either made by you  
18 or made under your direction by people who work immediately  
19 under you?

20 A That is correct.

21 Q Are those work sheets the raw material from  
22 which the audit report, which we now call Defendant's B  
23 for identification, is the final, finished product result?

24 A This is correct.

25 Q In essence, the central authorship for this

1  
2 is what you are looking into to substantiate, verify,  
3 and either allow or disallow, based on your final decision?

4 A This is correct.

5 Q Immediately below on that same page, do you  
6 have in your handwriting a title called "Administrative  
7 Expense Allowed Per Audit"?

8 A That is correct.

9 Q Does that mean, sir, that what follows is what  
10 you in your decision as the auditor and author of that  
11 whole report is allowing?

12 A That is correct.

13 Q Do you find, under the next subtitle, the words  
14 "Gross Salaries"?

15 A Yes.

16 Q Do you find there a list of names of employees?

17 A Yes, sir.

18 Q Under "Administrative Expenses Allowed per  
19 Audit," "Gross Salaries," do you find the name Susan  
20 Horowitz?

21 A Yes.

22 Q Do you find an allowance as per your audit, that  
23 you are allowing rather than disallowing Susan Horowitz's  
24 gross salary to be \$880?

25 A This is correct.



1                   MR. HONIG: Would you mark it.

2  
3                   May the record reflect the page we have just  
4                   been testifying about with Mr. Spencer is now Defendants'  
5                   F for identification.

6                   (Defendants' Exhibit F marked for identifica-  
7                   tion.)

8                   Q     I take it, sir, in all of the accumulated data,  
9                   whatever you allowed or whatever you disallowed, Susan  
10                  Horowitz's gross salary payments of \$380 was not challenged  
11                  by your audit?

12                 A     That is correct.

13                 Q     Sir, would you now turn to that portion of the  
14                  same work papers -- withdrawn for just a minute.

15                 I take it, sir, in your final audit report which  
16                  is the finished product, the result of all of the labors  
17                  that you put into those green, long sheets, which is  
18                  Defendants' B, any recommendations or any disallowances  
19                  or any unfavorable conclusions with respect to Youth In  
20                  Government does not conclude that Susan Horowitz should  
21                  have been disallowed her \$380?

22                 A     That is correct.

23                 Q     Please look again in your green, work sheets to  
24                  that part of it, and I think I can direct it to you as  
25                  WF page No. 8.

xxx

1                   MR. HONIG: Objection.

2                   THE COURT: Would that be the cause of any  
3                   objection on your audit?  
4

5                   THE WITNESS: It could be, your Honor.

6                   Q     What could that be?

7                   MR. FLYNN: Objection.

8                   THE COURT: How would you treat it on your audit  
9                   if you found there was a claim interposed for \$110 for  
10                  three hours' service?

11                  THE WITNESS: It would depend on the rate. If  
12                  we felt that the amount -- that the wage being received  
13                  for that length of time was excessive, we would question  
14                  it. If it was a reasonable wage, we would not question  
15                  it.

16                  MR. EPSTEIN: Nothing further.

17                  REXCROSS-EXAMINATION

18                  BY MR. HAMMER:

19                  Q     In connection with the audit and questioning of  
20                  those several items, has not the vendor and the sponsor  
21                  joined in delivering in, subsequent to your audit report,  
22                  a good deal of verification for those items you took  
23                  exception to?

24                  A     I am not aware of that, sir. I departed New  
25                  York as soon as I completed the rough draft. I am not



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Spencer-recross  
Gilchrist-direct

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2 compulsory to work a specified number of hours in the  
3 consideration of the claimed hours that were worked?

4 A No.

5 Q Was there anything in the regulation, in the  
6 memo, Section 225, and the handbook in its whole totality  
7 that set pay scales, minimum pay scales, hourly rates, day  
8 rates or weekly rates for any of the employees of the  
9 sponsoring company?

10 A No, sir.

11 MR. HONIG: Nothing further.

12 THE COURT: You may step down.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. EPSTEIN: The government calls Gary Gilchrist.

16 G A R Y C. G I L C H R I S T, called as a witness  
17 by the Government, being first duly sworn, testified  
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. EPSTEIN:

21 Q Mr. Gilchrist, what is your occupation?

22 A I am a student.

23 Q Where?

24 A At Columbia University.

25 Q What year are you in?

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Gilchrist-direct

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2 them.

3 In addition to that, I would make sure everything  
4 was going smoothly; that there were no violations. If  
5 there were, I would report them back to the Youth In  
6 Government office.

7 Q After you visited the sites, what, if anything,  
8 did you do?

9 A After I went to the sites, I would usually make  
10 note of what the discrepancies were. Then I would go  
11 back to Youth In Government and I would tell this Pedro  
12 Rodriguez, who was working at that time at Youth In Govern-  
13 ment, I would tell him what the discrepancy was and from  
14 there he would try to correct it.

15 Q Was this your job for the entire summer?

16 A Yes.

17 Q What were your normal working hours?

18 MR. FLYNN: Object to "what is normal."

19 THE COURT: Overruled.

20 A Working approximately from 10 to 4 in the  
21 afternoon.

22 Q Did you work every day of the program?

23 A Yes, I did.

24 Q Did you take any days off?

25 A No, I did not.



2 and the monitor were both paid \$110 a week?

3 A Correct.

4 Q And that was due, sir, don't you know, because  
5 there was a budget reduction for all of the Food Service  
6 Program in New York City for all of the sponsoring  
7 organizations?

8 A This was true for Youth In Government. I don't  
9 know about other sponsors as to were their salaries cut  
10 for their employees.

11 Q Then you know there was a budget cut that  
12 affected Youth In Government?

13 A It was cut back because USDA rejected some of  
14 the sites.

15 Q Do you know there was an overall budget cut  
16 that the United States Department of Agriculture imposed  
17 on the entire scheme of the Summer Lunch Program for the  
18 City of New York?

19 MR. EPSTEIN: Asked and answered.

20 THE COURT: He may answer it.

21 A I did, I remembered something like that.

22 Q And that the result of that, down at the grass-  
23 roots level, the working level --

24 THE COURT: This is just repeating and repeating  
25 and repeating. Please do it once and that is enough.

wound up getting the same pay for that summer program, namely 110 per week, is that right?

A That is right.

Q Finally, Mr. Gilchrist, when we discussed -- and this is a question, perhaps, I should have asked earlier -- when we discussed your bringing to the office either a discrepancy or a deficiency or an excess or underage of the food units, and that had to be attended to with the vendors, was it your experience that after you made these complaints, the corrections took place at the sites? Meaning, whatever had to be done with the vendors, finally was accomplished, so the deficiency or mistake or error or the lack was cured?

A Yes. I would say this to Mr. Rodriguez.

Q You made the complaint to the office, whoever it was in the office?

A You made it to a specific person. It wasn't just anybody.

Q You are not listening to my question.

There was something wrong that had to be attended to that was coming out of the vendors.

A Correct.

Q You would note it at the site or someone at the site would tell you about it in a complaint?



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A Yes.

Q You would go to the office?

A Yes.

Q That ended your function. You wouldn't go to the vendor?

A No.

Q Was it your experience that after you made the complaint, that ultimately those things were cured or alleviated or corrected?

A They were corrected.

MR. HONIG: That is all I have.

RECROSS-EXAMINATION

BY MR. FLYNN:

Q You were asked by Mr. Epstein whether or not you submitted any reports to the United States Department of Agriculture.

A Yes.

Q You were asked, too, whether or not you caused any reports to be submitted to them and you said "No."

Do you know of your own knowledge that Mr. Sammarco ever submitted any reports to the USDA?

A I have no idea.

Q Do you know whether or not he caused any reports to be submitted to the USDA?

1 following Monday, June 30, were there any further conver-  
2 sations about this?  
3

4 A He came in --

5 Q Refer to whom you are referring to.

6 A Angelo Puig came and told us that his figures  
7 were wrong and that we would now be making \$110 as a  
8 monitor.

9 Q Was there any conversation about other employees  
10 at this time?

11 A That is when he introduced the names of John  
12 Sammarco and Susan Horowitz, who would be our immediate  
13 supervisors.

14 Q Did he tell you what they would be doing?

15 A They would be supervising.

16 Q Did you meet those individuals at that time on  
17 that day?

18 A I believe so.

19 Q Do you recognize them in court today?

20 A Yes. John Sammarco, in the gray suit, I met  
21 him that day; and I believe I met Susan Horowitz -- I  
22 didn't meet her. I saw her there that day.

23 Q Can you point her out?

24 A She is sitting back there with a brown sweater.

25 MR. EPSTEIN: May the record reflect the



1  
2 All together, how many sites were acquired  
3 through the efforts of yourself and others as the total  
4 number of sites to be serviced by Youth In Government?

5 A Roughly, I would say we submitted 168 sites and  
6 we were approved for 43.

7 Q When you say "you submitted," who did you submit  
8 that to?

9 A Angelo Puig submitted it to the USDA, U. S.  
10 Department of Agriculture.

11 Q Showing you Exhibit D for identification, will  
12 you look at that and tell us whether you ever saw that  
13 document before now?

14 A Not to my recollection.

15 Q Did you know that the budget that Youth In  
16 Government has submitted, called for two supervisors to  
17 be paid 175 per week?

18 A I never saw the budget that was submitted. It  
19 was just told to me and I did know of the fact there would  
20 be two supervisors at 175, yes.

21 Q So the supervisors weren't going to make 250,  
22 were they?

23 A It was originally told to me, I would be a  
24 supervisor making that salary. When the program began  
25 and the reduction by the USDA did in fact constitute a

1 to be sure, we will ask him.

2 Did you, on receipt of any complaints, communicate  
3 those complaints back to your office?  
4

5 THE WITNESS: I did.

6 Q Did those complaints have to do with something  
7 that needed correction from the vendor who was producing  
8 the food and distributing it to the sites?

9 A Yes. At times, if the food was in fact spoiled,  
10 we would get back to the vendor and the vendor would  
11 deliver edible food.

12 Q Would there also have to be corrections if  
13 there was excessive amounts or shortage of amounts?

14 A Yes. If the site requested it and did in fact  
15 tell me there was a shortage for the day, and the USDA had  
16 allowed more lunches to be delivered and the site requested  
17 up to that amount, they would be delivered, yes.

18 Q Did you have any connection with visiting or  
19 contacting the vendor at his premises, to correct whatever  
20 deficiency or discrepancy or whatever complaint there was?

21 A In August, yes.

22 Q Did you have anything to do with it in July?

23 A No.

24 Q Did you visit the vendor's premises?

25 A On one occasion, yes.



1 rklm Rogers-direct 284

2 A I was a site monitor.

3 Q What, briefly, was your daily schedule as a site  
4 monitor?

5 A My daily schedule was to pick up the receipts  
6 from certain sites and to report any violations or problems  
7 on that particular site.

8 Q What were your hours, approximately?

9 A Approximately 9 to 2.

10 Q Did you visit the office of Youth In Government  
11 every day?

12 A Yes. Not every day. I was out a few days. But  
13 mostly every day, right.

14 Q During the course of the summer, did you miss  
15 any work days, Mr. Rogers?

16 A Yes, I did.

17 Q How many?

18 A Approximately four, maybe five.

19 Q What was the cause of your missing those work  
20 days?

21 A Part of the cause was a death in my family.

22 Q Mr. Rogers, were you a monitor for the entire  
23 two months of the program?

24 A Yes, I was.

25 Q How often, during the course of the program, did



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Q Do you know where the vendor was located by address?

A No.

Q Had you ever visited or gone to or inspected the vendor's premises?

A No.

Q Had you ever gone to watch the loading of the trucks early in the morning?

A No.

Q Do you know the name of the vendor that was servicing the children who were receiving food through the operations of Youth In Government for July and August of 1975?

A I believe it was A and P.

Q A and P?

A Or A and M; something to that effect.

Q Didn't you once state and testify that you believed it was R and L?

A I also indicated that I just didn't know.

Q You didn't know?

A Right.

Q That is because you had nothing to do with the vendor?

A That is right, exactly.



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A Yes.

Q Would it be your practice to remain there during the entire day?

A Just about, yes.

Q Would it be your practice, during the month of June, 1975, to be the person to lock up the store and close it down?

A Yes.

Q Then it would be correct to say that you certainly would know who was in and out of that store during the course of the day in June, 1975?

A Yes.

Q Mr. Rodriguez, was there one or more vendors that were the source of the food, the product for Youth In Government, in the months of July and August, 1975?

A I don't know anything about the vendors, really.

Q I am asking you this. I am not asking you about them. I am asking you if you know whether there was one or more than one vendor used by Youth In Government in the months of July and August of 1975?

A As far as I know, there was only one vendor.

Q And the same vendor throughout that entire summer program for Youth In Government?

A As far as I know.

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are required by anybody.

(Witness excused.)

MR. EPSTEIN: The Government calls George Konstandt  
G E O R G E K O N S T A N D T, called as a witness  
by the Government, being first duly sworn, testified  
as follows:

DIRECT EXAMINATION

BY MR. EPSTEIN:

Q Mr. Konstandt, what is your occupation?

A Vice-president of a management consulting firm.

Q What is the name of your firm?

A Arawak Consulting Corporation.

Q Could you spell that?

A A-R-A-W-A-K.

Q Where is that located?

A 210 East 86 Street, New York.

Q How long have you been employed by Arawak?

A About four years.

Q Could you describe the nature of Arawak's consulting work, please?

A Provide consulting services to private individuals, firms and to various agencies of the U. S. Government, under contract.

Q On what types of matters do you provide consultation?



1  
2 A We provide consulting services for small businesses  
3 and we also provide services --

4 THE COURT: Is this function consulting?

5 THE WITNESS: Among other things. We provide  
6 programmatic services, too.

7 Q Was Susan Horowitz ever employed by Arawak?

8 A Yes, she was.

9 Q What was her period of employment, if you recall?

10 A From July, '75 to April of '76.

11 Q Do you recognize Miss Horowitz in court today?

12 A Yes, I do.

13 Q Could you point her out, please?

14 A The woman in the back in the blue sweater.

15 MR. EPSTEIN: May the record reflect the identi-  
16 fication?

17 THE COURT: Yes.

18 Q Could you tell us the nature of her work, Mr.  
19 Konstandt, please?

20 A She was hired for a project that we were under-  
21 taking as a staff associate.

22 Q What was the nature of the project?

23 A A research project into the problem of reassimil-  
24 ating ex-offenders back into society.

25 Q What was her salary?

1 A \$12,000 per annum.

2 Q Do you recall receiving an application for  
3 employment from Miss Horowitz?

4 A We did receive an application.

5 Q I show you Government's Exhibit 17 for identifica-  
6 tion and ask you if you can identify that, please.

7 A This is an application that was filled out by Miss  
8 Horowitz for employment by our firm.

9 Q Was it submitted to Arawak?

10 A Yes, it was.

11 Q Was it thereafter maintained by Arawak in the  
12 regular course of its business?

13 A Yes, it was.

14 Q Was it the regular course of the business to  
15 keep and maintain such employment applications?

16 A Yes, it was.

17 MR. EPSTEIN: I offer Exhibit 17.

18 MR. FLYNN: On behalf of the defendant Sammarco,  
19 objection.

20 THE COURT: It is to be received subject to  
21 connection as to the defendants other than Miss Horowitz.

22 MR. HONIG: Is Susan Horowitz known on this  
23 application as "Susan I. Horowitz"?

24 THE WITNESS: I don't know exactly what it says  
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on it.

MR. HONIG: Look at it, please.

THE WITNESS: It does say "Susan I. Horowitz."

MR. HONIG: Is it signed as "Susan I. Horowitz"?

THE WITNESS: Yes, it is.

MR. HONIG: No objection.

(Government's Exhibit 17 for identification

received in evidence.)

Q Mr. Konstandt, was it the practice of Arawak to  
maintain attendance sheets?

A Yes.

Q Can you describe them?

A These were sheets that had the various days of  
the week on them and the place for the date of the week, the  
name of an individual and a place for a signature.

Q Were they submitted weekly or daily to Arawak?

A They were to be submitted on a weekly basis.

Q I now show you Government's Exhibit 16 for iden-  
tification and ask if you can identify those, Mr. Konstandt,  
please.

A These are a number of time sheets.

Q Can you identify those?

A Yes, these are our time sheets which bear the  
name "Susan Horowitz."

xxx

1  
2 A That is correct.

3 MR. EPSTEIN: Your Honor, I therefore submit:  
4 is relevant.

5 THE COURT: I don't know whether August 29 represents  
6 an item at this moment. You will have to explain to me  
7 whether it represents a material item. I haven't got that  
8 in mind at the moment. That is the only reason I am holding  
9 it back.

10 Q Mr. Konstandt, do you recall the date on which  
11 Miss Horowitz began employment at Arawak?

12 A I believe it was July 7.

13 MR. EPSTEIN: I have no further questions.

14 I would like to read portions of the exhibits to  
15 the jury.

16 THE COURT: Go ahead.

17 MR. EPSTEIN: Does your Honor have the sign-in  
18 sheets?

19 THE COURT: Yes.

20 Is there anything else for this witness or can  
21 he be excused?

22 MR. HONIG: I might be interested in cross-  
23 examining him.

24 THE COURT: Then we will keep him here.

25 (Mr. Epstein read to the jury from Government's



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Q Scope of work of the contract is what?

A To develop a program that would meet the needs of ex-offenders to reassimilate into society.

Q As part of the development of that program, was it the duty of that staff to survey already existing programs in operation?

A Part of the function was to look at other programs, yes.

Q Was her employment on a professional level rather than on an administrative or regular, general employee level?

MR. EPSTEIN: Objection.

THE COURT: Sustained.

Q What was she hired as?

A She was hired as a staff associate.

Q Is that a professional job?

A Yes.

Q Am I correct, sir, that with respect to those people on the professional level in the organization, you did not maintain a punch-in time clock?

A That is correct.

Q Was there a punch-in time clock maintained -- and we are talking about July and August of '75 and if I don't mention July and August, know that I mean July and August

1 of '75 -- in that time period, was there a time clock  
2 punch-in system used at Arawak?  
3

4 A There was not.

5 Q Was there a sign-in system used?

6 A The system that was used is the one that has been  
7 introduced already.

8 Q Was that the system used for each and every  
9 employee?

10 A Yes, it was.

11 Q Was there any other system in which the employee  
12 had to sign a log book with a specific hour in, and a  
13 specific hour out, or punch a time clock?

14 A No, there was not.

15 Q What was, sir, the background of Miss Horowitz  
16 with respect to the work that you hired this lady for? And  
17 I am now handing you for your reference, Government's  
18 Exhibit 17 in evidence.

19 MR. EPSTEIN: Objection.

20 THE COURT: Sustained.

21 Q Were there any qualifications required in the job  
22 that were set down as prerequisites by you or your organiza-  
23 tion, sir?

24 A We were looking for a general background that  
25 would have involved social work, particularly a Master's



1  
2 in Social Work?

3 Q A Master's in Social Work?

4 A Yes.

5 Q Do you hold that degree yourself?

6 A No, I do not.

7 Q Did Miss Horowitz, at the time of her consideration  
8 for employment, hold a Master's in Social Work?

9 MR. EPSTEIN: Objection.

10 THE COURT: Sustained.

11 MR. HONIG: May I interrupt the interrogation to  
12 read one line of Exhibit 17.

13 THE COURT: You can read any part of it.

14 MR. HONIG: Under "Education after Grammar School,"  
15 which I will not read; and "High School," which I will not  
16 read; is "College," and in college is written down "York  
17 College of CUNY, B.A. degree, Political Science." After  
18 that is "Columbia University, M.S. degree in Social Work.  
19 Date graduated 6-73."

20 Q Did Miss Horowitz report directly to you, every  
21 day, of the time you are talking about?

22 A No, she did not.

23 Q Was it her function to?

24 A No, it was not.

25 Q Was she required to report to any other person

every day at Arawak during the time we are talking about?

A No, she was not.

Q Was she, under the term you used, "staff associate, really a field researcher that was going into the field and looking at the already existing programs and how they operated in their attempts to work with ex-offenders and get them back into society?

A That was part of her function.

Q Was that part of her daily function?

A It was part of her function. It was on a daily basis, occasionally.

Q And also, was it her function to write reports or written material on her findings or her suggestions or her development of these ideas about how programs like these should work and should be implemented?

A If she did visit a program, she was supposed to have written them up.

Q Did she write them up?

A If she did visit a program, she did write them up.

Q Didn't she visit the programs? Didn't you get write-ups?

A I did not receive that work. It was not my function to directly receive that.



1  
2 A There was a time period. It was nominally a  
3 9 to 5, eight-hour-a-day job.

4 Q You used the word "nominally." What do you mean  
5 by the word "nominally" in the context you just used?

6 A That the employees were not required to punch  
7 a clock in the true sense of the word, nor were they  
8 required to have to be at work at 9. It was expected that  
9 their duties and functions would dictate somewhat the  
10 flexibility of the hours.

11 Q When you say "their duties and functions dictated  
12 flexibility," it was Miss Horowitz's job, geared to  
13 the mission, rather than geared to being at a certain desk  
14 for a certain number of minutes, hours and seconds?

15 A That is correct.

16 Q And the mission was to research and follow  
17 up on programs that were already in existence so she could  
18 help in developing your organization for a new program; is  
19 that right?

20 A That was part of her function.

21 Q And in connection with that, it was not necessary  
22 for her to be a 9 to 5, every-day employee; is that right?

23 A That is correct.

24 Q Of the eight sheets, sir, which are Government's  
25 Exhibit 16 in evidence, how many of those sheets show the

1  
2 Q What section was it?

3 A 225.

4 Q Sir, was the budget of Youth In Government some-  
5 thing which was brought to your attention?

6 A Yes, sir.

7 Q What connection did you have with the budget?

8 A We had to calculate the probable total reimbursible  
9 cost of the program as part of the approval process.

10 Q Were you familiar with budgetary matters, as  
11 coordinator, in the spring and summer of 1975 for the  
12 Manhattan sponsoring companies?

13 A Yes, sir.

14 Q Was there a change in the overall allowance of  
15 the budget for the entire New York City area made by the  
16 United States Department of Agriculture?

17 MR. EPSTEIN: Objection. Leading.

18 THE COURT: Sustained.

19 Q Was there a change in the budget, sir?

20 A Yes.

21 Q What did the change effect?

22 A It had to do with the overall funding of the  
23 program, as I understood it. The requested funds, if you  
24 added up the total budget of all sponsors, exceeded the  
25 total available money.



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Q Was there a budget reduction?

A Yes, there was.

Q Did that result, in turn, in your promulgating or your office promulgating a reduction in the allowance to each of the sponsoring companies?

MR. EPSTEIN: Objection. Leading.

THE COURT: I will sustain the objection.

Q How did that overall funding change in New York City affect the sponsoring companies, sir?

A It reduced their total budget.

Q About when did that take place, if you recall, sir?

A I believe it was early in the program. I don't remember the exact date. I would say sometime early July, late June.

Q Early July, late June?

A Late June, early July.

Q Can you tell us, sir, if either you, as coordinators, Bouchard and you, or the handbook that governs it or Section 225, make a mandatory list of personnel to be functioning within a sponsoring company?

MR. EPSTEIN: Objection.

THE COURT: Sustained.

Q What regulations or what rules or what guidelines

1  
2 were set down for the sponsoring companies for the creation  
3 of their table of organization or staff?

4 A They had to identify the responsible individuals  
5 that would administer their program.

6 Q Was there a limit to the number they could hire?

7 A No numerical limitation as proposed by the USDA.

8 Q As what?

9 A Imposed by the USDA.

10 Q Was there a job title prescription for each of  
11 the employees?

12 A There were some specific positions identified  
13 that we requested or that we would expect them to have.

14 Q Within that framework, were there supervisory and  
15 executive positions?

16 A Yes.

17 Q Were there monitoring positions?

18 A Yes.

19 Q Were there liaison positions?

20 A Not specifically.

21 Q Was there a prescription of the particular  
22 duties and obligations of each position as a requirement  
23 within the sponsoring company promulgated by you under  
24 the department?

25 MR. EPSTEIN: Objection.



2 THE COURT: Sustained as irrelevant.

3 Q Did the department or you, as coordinator, fix  
4 or prescribe the salary amounts for each and any of the  
5 positions within the sponsoring companies?

6 A No.

7 Q Did you, as coordinator, or the department, prescribe  
8 or fix mandatory hours of operation for any of the jobs  
9 within a sponsoring company?

10 A We required that the sponsoring agency be avail-  
11 able to respond to our communications with them during-  
12 normal working hours. We did not identify a specific  
13 job or hour requirement per position.

14 Q Would you please answer my question, sir.

15 Did you or the department fix or promulgate  
16 specific hours of work for any of the specific jobs of the  
17 people in the sponsoring company?

18 MR. EPSTEIN: Objection. I think the question  
19 was answered.

20 MR. HONIG: It has not been answered, I submit,  
21 your Honor.

22 THE COURT: I will overrule the objection.

23 You are going to have to let this witness testify  
24 and I will ask you to bear in mind what the case is that  
25 we are proceeding under. This is not a moment for collateral

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2 answer this question and if it gets any further, we will  
3 shut it off.

4 Go ahead.

5 A When our monitors returned from visiting the  
6 sites during the day, they would file reports, "monitor  
7 reports," as we called them, that would indicate what  
8 problems they discovered at each of the sites they visited.  
9 We would then transmit that information to the sponsoring  
10 agency in the way of a violation form or monitor report,  
11 depending how severe the problem was, and they were expected  
12 to respond to those problems and correct them.

13 Q Would that of necessity involve dealing with  
14 the vendor?

15 A Yes.

16 MR. HONIG: I may have gotten a little lost,  
17 your Honor.

18 Q If I asked this question, I will withdraw it.  
19 You had nothing to do with the fixation or  
20 authorization of salaries within YIG, did you?

21 MR. EPSTEIN: Objection.

22 THE COURT: You may answer that.

23 A No, we had nothing to do with that.

24 Q Did Miss Michele Bouchard ever do an on-site  
25 inspection of the operations of Youth In Government herself,



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the circumstances listed in those violations or reports with the people actually at the sites?

A Yes, sir.

Q To the best of your recollection, sir, can you give me the area that the Youth In Government operated sites in this Summer Lunch Program?

MR. EPSTEIN: Objection.

THE COURT: Overruled.

A I believe it was in the Upper Manhattan section, sir. I am not particularly clear. There may have been some other sites scattered around.

Q Were there any on the Lower West Side, do you remember?

A I don't remember any.

Q Did you on occasion go into the field and look at sites personally?

A Yes, sir.

Q You have indicated earlier, sir, that at some stage in the late spring or the beginning of the summer of 1975 there was some budgetary reduction in the Department of Agriculture's program; do you recall that?

A Yes, sir.

Q Can you tell me, sir, about how large a reduction -- as I understand it, and correct me if I am in error,

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the reason for this is that the excess exceeded the funds allocated?

A Yes, sir.

Q By how much?

A I believe it was 15 to 20 percent. I am not sure of the exact amount.

Q What, if anything, did your agency -- upon receipt of this, what, if anything, did your agency then advise sponsoring organizations that they would have to do because of this budget problem?

A I don't think we had to advise them as to what they had to do. There simply was to be less funds available than what they expected, so obviously they were going to have to allow for that within their program.

Q They were going to have to make budget cuts?

A They would have to adjust their budget, yes.

Q To your knowledge, did Michele Bouchard ever do on-site inspections?

A She did, sir.

Q Do you have any independent recollection of the persons you saw on the 31st of July?

You said you saw people.

A I remember some people, specifically.

Q Do you recall whether or not you saw John Sammarco



1  
2 Youth In Government --

3 THE COURT: You better rephrase your question.

4 MR. HONIG: Thank you.

5 Q Did you have anything to do with the people in  
6 Youth In Government who were working with the vendor?

7 A That would depend on an individual situation.

8 Q Do you know who was working with the vendor for  
9 Youth -- that was servicing or catering Youth In Government's  
10 candidates or eligible children?

11 A I would assume that was the director or his  
12 assistant.

13 Q Did you know who was personally taking care of  
14 the day-to-day affairs with the problems with the vendor?

15 A Not specifically.

16 Q Were you ever told who it was?

17 A I can't remember.

18 Q Did you know that the budget that was part of  
19 the application in the contract called for supervisors?

20 MR. EPSTEIN: Objection.

21 THE COURT: Sustained.

22 Q Did you ever inquire who it was that took care  
23 of the complaints which pertained to vendor discrepancies,  
24 deficiencies or omissions or irregularities?

25 MR. EPSTEIN: Objection.

THE COURT: Overruled.

A No, sir.

Q Did you know it was Susan Horowitz that was doing that?

A No, sir.

Q Given your inspection -- and I am now referring to AF in evidence -- given your inspection with your monitor on July 31, 1975, did you have any cause or reason to believe that the staff should be in any way reduced or diminished as given to you or as you inspected it?

MR. EPSTEIN: Objection.

THE COURT: Sustained.

Q Did you cause any further inquiry or investigation to be made of the on-site operations of the people that you put down in response to Question No. 19?

MR. EPSTEIN: Objection.

THE COURT: Sustained.

REDIRECT-EXAMINATION

BY MR. HAMMER:

Q Mr. Eadie, it is your present testimony on cross-examination that you wrote the first name in response to Question 19 and your monitor assistant wrote the balance?

A Yes, I believe that is the case.

Q You don't remember the name of the monitor, is



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Massielli-direct

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AFTERNOON SESSION

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2 p.m.

4

(In open court; jury present.)

5

MR. HAMMER: Paul Massielli.

6

N A T P A U L M A S S I E L L I, called as a witness

7

by the defendants, being first duly sworn, testified

8

as follows:

9

DIRECT EXAMINATION

10

BY MR. HAMMER:

11

Q Mr. Massielli, by whom are you employed?

12

A I am employed by AMPM Food Service.

13

Q What is the nature of that firm?

14

A We are a wholesale meat outfit and we also

15

serve hotels and do school lunch programs in the summer-

16

time.

17

Q Was your firm active in the 1975 Summer Lunch

18

Program in the City of New York?

19

A Yes, it was.

20

Q How many organizations did you serve in that

21

program?

22

A We served four sponsors that year. We served

23

United Catholic Parents in Brooklyn; we served Youth In

24

Government in Manhattan; we served Puerto Rican Sports

25

Counsel in Queens and we served STOP in Brooklyn.

1  
2 Q What does STOP stand for?

3 A Service To Organized People.

4 Q In the summer of 1975 when you serviced the  
5 sponsor, Youth In Government, in what capacity did you  
6 serve your firm?

7 A I was like production manager for the whole  
8 place. I took care of the total production. I made sure  
9 that the truckings went out on time, usually before 9  
10 o'clock. I made sure that the product was wholesome, to  
11 the best I could, because we had four lines; and I just  
12 oversaw everything.

13 Q In that regard, did you note or have opportunity  
14 to note whether or not there were monitors from the service  
15 organizations attending your plant?

16 A Yes. Each sponsored their own people there in  
17 the mornings to make sure that their trucks got out early  
18 and to make sure that the products--no juices were leaking  
19 or milk spoiled and the fruit was ripe; stuff like that.

20 Q Did there come, from time to time to your  
21 attention, some requests for correction of amount of product  
22 or type of product?

23 A We have complaints almost every day from these  
24 people. All they would do is just keep bothering you that  
25 the milk is upside down in the bag; the juice is leaking;



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2 how come their truck isn't out first; why do they have to  
3 be last.

4 Q There was continuing daily contact between your  
5 firm and the monitors of the several sponsors, is that  
6 correct?

7 A Right.

8 Q And that was a regular position attended to by  
9 each sponsor through its personnel?

10 A Right.

11 Q Do you know who the monitor, assigned to the AMPM  
12 Food Service plant, was, in the summer of 1975 for Youth  
13 In Government?

14 A The monitor from Youth In Government was Susan  
15 Horowitz.

16 Q Did you happen to have opportunity to see her  
17 at your plant during the program, July and August, 1975?

18 A I used to see her just about every morning because  
19 of all the people, I think she was the one with the most  
20 complaints.

21 Q Did she seem to be competent and conscientious?

22 A Yes, but at times she really went to extremes.  
23 She wanted her trucks out first every morning and they  
24 were only going to Manhattan. We had other people going  
25 to Brooklyn and Queens.

Q Did she insist with some vigor, I gather, that Youth In Government be attended to?

A Yes.

MR. EPSTEIN: Objection.

THE COURT: Overruled.

Q Do you see Susan Horowitz here today in this courtroom?

A Yes.

Q Where is she, sir?

A Right back there behind Mr. Buigues.

MR. HAMMER: Thank you.

DIRECT EXAMINATION

BY MR. HONIG:

Q Mr. Massielli, when for the first time did you ever see or meet me?

A Just this morning.

Q Where was that?

A Right outside in the corridor.

Q Were you introduced to me as the person who was in charge of the AMPM production or catering?

A Yes.

Q Did I ask you about my client, Susan Horowitz?

A Yes.

Q Did you say something unflattering or uncomplimenta



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A Yes.

Q What were you told to do with it, once completed?

A Send it back into the office. Bring it in,  
rather.

Q Pardon me?

A Bring it back into the office.

Q Did you do that in the course of your duties?

A Yes.

Q In the course of your duties, Miss Pacheco,  
approximately what time would you start your workday and  
what time would you complete it?

A I would start it at 9 and finish by 1 o'clock;  
1 o'clock would be the latest.

Q Did your other co-workers work at a similar  
time?

A Yes, sir.

Q All of them?

A Yes, sir.

Q In the course of your employment with Youth In  
Government, did you happen to have opportunity to see Susan  
Horowitz at the Amsterdam Avenue location?

A Yes.

Q Did you have occasion to see Mr. John Sammarco  
there?

1  
2 A Yes.

3 Q Will you tell us the nature of what Mr. Puig  
4 said to those gentlemen and what response they made, if  
5 any?

6 A He explained to them the importance of having  
7 those weekly reports and the daily receipts. That is how  
8 he would get paid by the Government. He told them they had  
9 to go back to the sites to get the signature. They had to  
10 wait for the person in charge if he wasn't there. They  
11 had to take care of the problems that occurred there. If  
12 they couldn't handle it, to call in and he would help them.  
13 They said "Okay" and "Fine" and everything at the beginning.  
14 Then they just ignored him.

15 When he continually had to speak to them about  
16 it, they would argue with him: it was too much of a hassle;  
17 they couldn't do it; they didn't have time. But that is  
18 what they were getting paid for. They had to have the time  
19 to do this.

20 Q Did you have an opportunity to note the amount  
21 of time those gentlemen spent in the course of a day upon  
22 their assigned duties?

23 A Yes.

24 Q Could you tell us how much that was?

25 A About two or three hours a day.



1  
2 made in the amount of lunches or any complaints that were  
3 given by the directors of the other programs about their  
4 lunches, I would call her up and she would take care of  
5 that.

6 Q Did you work for Youth In Government in the  
7 summer of 1976 in their Summer Lunch Program?

8 A Yes, I did.

9 Q Do you know who the funding agency was for the  
10 program this past summer of 1976?

11 A The State Government, I believe.

12 Q Do you know who the funding agency was for 1975?

13 A The Federal Government.

14 MR. HAMMER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HONIG:

17 Q Miss Nieves, having worked in July, did you par-  
18 take voluntarily in the month of June in the Youth In  
19 Government office?

20 A No.

21 Q You were not there in June at all?

22 A No.

23 Q Could you tell us if it was your function to  
24 pass on to Susan Horowitz -- it was your job to pass on  
25 to Susan Horowitz the collected complaints from the sites



1  
2 that had to do with the vendor's performance?

3 A Yes.

4 Q Did you pass that on to her?

5 A Yes, I did.

6 Q Do you know if, as the result of what you told her,  
7 that there were corrections made, that changes were made  
8 as required by the vendor?

9 A Yes.

10 MR. EPSTEIN: Objection.

11 THE COURT: Overruled.

12 Q Could you answer that?

13 A Yes, there were.

14 Q Did you know that your job was that whatever --

15 THE COURT: Are you telling her or asking her?

16 MR. HONIG: Withdrawn. I am sorry.

17 THE COURT: The correct way is, if you want her  
18 to testify, is: What was her job?

19 Q What was your job in connection with Susan  
20 Horowitz?

21 A To call her up if there were any changes required  
22 at the sites, lunch amounts.

23 Q When you say "to call her up," where to call her  
24 up?

25 A To the vendor.



1 which you inserted the numeral 7 in those several places  
2 in your book during the period, 1975?

3  
4 THE COURT: I would like to have you suspend for  
5 just a moment.

6 One of the lawyers has an engagement before  
7 another judge at a quarter of 5. That judge is calling  
8 me now and it may be we will have some word from him as to  
9 what the progress of our case here is, so just relax and  
10 stay in recess for a minute while I go inside and take his  
11 call.

12 (Recess.)

13 THE COURT: Mr. Kaufman, I think there was a  
14 question that had been put to the witness when I interrupted.

15 (Question read.)

16 THE COURT: The numeral 7 refers to the seven hours  
17 of the day?

18 THE WITNESS: Yes.

19 A When the first week of the program started, I  
20 confronted Pedro Rodriguez to help me.

21 Q Why did you select Pedro Rodriguez?

22 A In this particular matter, because he had exper-  
23 ience working for the Federal Government and the State in  
24 summer programs, plus he was a deputy director. I asked  
25 him about how many hours was everybody working: three hours,

four hours, whatever. He instructed me to put "7 hours." That would be a standard procedure and there would be no problem.

Q Did he tell you that was current throughout the program of the City of New York to list as such?

A Yes.

Q Did you observe how many hours, in fact, the workers took to do what was scheduled to be a seven-hour job?

A They came in. They never signed in and signed out. They took always for granted it was a big joke about signing in and signing out.

THE COURT: A big joke?

THE WITNESS: Yes.

THE COURT: Getting paid was a big joke?

Q Who do you refer to when you say that?

A Frank Rodriguez, Pedro Rodriguez, Gary Gilchrist. I refer to Edward Rogers. I refer to Robert DeLeon, Moises Birriel. Those were most of the people we had problems with on the premises.

Q What was the nature of the problems you had with those gentlemen?

MR. EPSTEIN: Objection, unless the witness is testifying from personal knowledge.



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Q What was the salary that all were receiving below the executive level?

A \$110.

Q Regardless of whether they were working at the community sites where the food was delivered; whether they were working inside the office of Youth In Government or whether they were working in the correction of complaints, either with the Department of Agriculture or with the vendor?

MR. EPSTEIN: Objection.

A Yes.

THE COURT: Sustained.

Strike out the answer.

This is direct examination and you are not privileged to lead the witness or put the answers in the questions.

Q When was it decided that the salary would be the same for everybody other than the executive personnel?

A After we found out that USDA was cutting their budget for the entire city.

Q Did everyone that was notified about that agree to accept that salary and work at that salary?

A Yes.

Q What specifically was the job mission of Miss

1 Susan Horowitz with Youth In Government in July-August of  
2 1975, if you know?

3 A She was to be at the vendor.

4 Q Why?

5 A We needed somebody from Youth In Government to  
6 be at the premises of the vendor to make sure that every-  
7 thing was going okay in terms of food, in terms of the  
8 trucks leaving on time.

9 Q What else did she have to do there?

10 A She was to receive calls from our office for  
11 any changes.

12 Q In what respect?

13 A The vendor, the lunches.

14 Q What kind of changes would that be?

15 A If a site was closed.

16 Q What would happen if a site was closed? What  
17 would have to be changed?

18 A The following day, we would not serve.

19 Q There was no need for food?

20 A Right.

21 Q So the vendor had to be told not to make a  
22 delivery for that?

23 A Yes.

24 Q What else?



1  
2 A If there were increases, if the USDA gave us  
3 more sites, we would have to notify the vendor to let him  
4 know that we had more lunches to be delivered.

5 Q What else was the function of dealing with the  
6 vendor?

7 A To make sure that food was properly packed.

8 Q Anything else you know of?

9 A That was the most important and basic.

10 Q Was there anybody else in Youth In Government,  
11 that was assigned to monitor or supervisor liaison with  
12 the vendor, other than Susan Horowitz?

13 A No.

14 Q Was that her exclusive job?

15 A Yes. Janet Nieves was the secretary. If there  
16 were any changes, complaints from the sites, she was to  
17 call her at the vendor.

18 Q Call who at the vendor?

19 A Susan Horowitz.

20 Q In other words, it was a transmission from the  
21 field to your office in Youth In Government at Amsterdam  
22 Avenue, which was transmitted out to Horowitz out at the  
23 vendor?

24 MR. EPSTEIN: Objection.

25 THE COURT: Those are your words. Please don't

1 do it and please don't make a leading question, then go  
2 on and ask the witness the same thing for her to repeat.  
3

4 Q What was the flow of the operation from the  
5 place in the community where the child got the food to the  
6 complaint, and how the complaint got corrected? Can you  
7 give us that flow?

8 MR. EPSTEIN: Objection.

9 THE COURT: Sustained.

10 Q Was Miss Horowitz required to go to the vendor  
11 or to go to 2176 Amsterdam Avenue, the office of Youth  
12 In Government?

13 A To go to the vendor, because she had to be there  
14 at 5:30 in the morning.

15 Q What was the purpose of that kind of an early  
16 arrival?

17 A She got there at 5:30 in the morning, because she  
18 was to make sure that everything that went out from Youth  
19 In Government was to be delivered the right and proper  
20 way.

21 Q When was the vendor supposed to deliver the food  
22 from its premises to your sites, the community sites?

23 A Between 8 and 11 o'clock.

24 Q Where was the vendor's plant where the truck and  
25 the food came together for the trip?



1  
2 A In The Bronx.

3 Q Do you know if Miss Horowitz had a private or  
4 personal car?

5 A No.

6 Q As the bookkeeper and record-keeper, was Miss  
7 Horowitz, to your personal knowledge -- withdrawn.

8 To your personal knowledge, as a bookkeeper and  
9 record-keeper, did Miss Horowitz prepare or cause to be  
10 prepared, file or make or cause to be filed or made, any  
11 report, any claim, any invoice or any document with the  
12 United States Department of Agriculture for the Summer Lunch  
13 Program of 1975?

14 A No.

15 MR. HONIG: Nothing further.

16 DIRECT EXAMINATION

17 BY MR. FLYNN:

18 Q Miss Anes, you were shown a document which has  
19 a designation AF.

20 I want to know whether or not at the time -- Mr.  
21 Eadie was at the office when this document was being  
22 prepared, is that right?

23 A Yes, sir.

24 Q I want to know whether or not, in your presence  
25 and in the presence of the other people in the office,

1  
2 Did Mr. Sammarco regard it as a big joke?

3 A No.

4 Q Neither did Miss Horowitz, is that correct?

5 MR. HONIG: Objection. There is no evidence --

6 THE COURT: Your objection is overruled, and  
7 please do not comment.

8 A May I have the question again?

9 Q Would it be your testimony -- is it your testimony  
10 that Miss Horowitz did not regard signing in and out as a  
11 big joke?

12 A Miss Horowitz didn't sign. She is a social  
13 worker and she was to report at 5:30 at the vendor, not at  
14 the office.

15 Q Miss Anes, do you know how many hours Miss  
16 Horowitz worked per day? Yes or no.

17 A No.

18 Q And you entered the number 7 for each and every  
19 day, isn't that correct?

20 A As per instructions from Mr. Pedro Rodriguez.

21 Q Is that correct, you entered the number 7 for  
22 each and every day that Miss Horowitz worked?

23 A Yes, for everybody.

24 Q Similarly, do you know the hours that Mr. Sammarco  
25 kept? Yes or no.



1  
2 Q You didn't go, early in the morning of July and  
3 August, up to The Bronx and Bruckner Boulevard to see what  
4 the vendors were doing or what Horowitz was doing?

5 A No.

6 Q And you didn't travel to the Department of  
7 Agriculture's offices, where they were located during the  
8 summer, to see what Sammarco was doing?

9 A No.

10 Q Nor did you travel to the community sites of  
11 anybody else to see what the site monitors were doing?

12 A No.

13 Q Was anybody--and that includes the site monitors  
14 that went out into the community, delivery sites where  
15 the food was or the vendor monitors or the trouble-shooters  
16 was anyone told they were required to put in a minimum or  
17 a maximum number of hours during the Summer Lunch Program?

18 A I don't understand.

19 Q If you don't understand it, it is my fault, not  
20 yours.

21 Did Robert Eadie or anybody from the Department  
22 of Agriculture advise you or anyone that you know of, the  
23 directors of Youth In Government, there were maximum and  
24 minimum hours of work for any employees in Youth In Govern-  
25 ment in the Summer Lunch Program?

1

2

A No.

3

Q Was there any such maximum or minimum hours?

4

A No.

5

Q Was Miss Horowitz required to report back

6

physically to the office of Youth In Government to file any

7

reports after she finished getting the trucks out and

8

inspecting the food at the vendors?

9

A No.

10

Q Would there be any reason for her to do so?

11

A No.

12

MR. HONIG: Thank you.

13

Nothing further.

14

REDIRECT EXAMINATION

15

BY MR. FLYNN:

16

Q Miss Anes, I am not sure that it is clear, but

17

can you tell me by month, when you issued the pay checks

18

to employees of Youth In Government for work for the month

19

of August?

20

A In September.

21

Q Pardon?

22

A In September.

23

Q Am I correct, ma'am, that the program had closed

24

by that time?

25

A Yes.



1                   rk1m                   Puig-direct                   789  
2                   We found a store front and it wasn't even a store front.  
3                   It was a really dinky place.

4                   Q     And that was where you had your headquarters, is  
5                   that correct?

6                   A     Yes, sir.

7                   Q     May I show you Defendants' Exhibits E and D, and  
8                   ask you if you recognize that.

9                   A     Yes.

10                  Q     What are they?

11                  A     First of all, one is the application for partici-  
12                  pation in the USDA program. This application has to come  
13                  into the Department of Agriculture before approval.

14                  The second one is a projected estimate for  
15                  participation: the number of meals; the breakdown; your  
16                  name, address; how many meals you are going to serve; how  
17                  many sites. We projected 15,000 lunches daily.

18                  Q     On what basis did you do that?

19                  A     On the basis of the sites that we had.

20                  Q     Did you submit to the Government some material  
21                  in reference to those individualized sites, the nature of  
22                  their programs and operations?

23                  A     At this time, yes, we did.

24                  Q     Tell us, please, how you devised the budget  
25                  which was submitted to the Government?

1  
2 A We had 63 sites which we submitted--63 sites we  
3 submitted to the Government, along with an application of  
4 participation, and the breakdown of a projected budget  
5 with different salary ranges, based on 15,000 lunches daily  
6 on 63 sites.

7 Q What do you mean "15,000 lunches daily"?

8 A Out of 63 sites, one site might serve 100 lunches,  
9 another site might serve 50, another site might serve  
10 250. You multiply that and we come up with 15,000. The  
11 Government allowed us 6 cents per lunch for administrative  
12 costs, which comes out to around \$900 a day for administra-  
13 tive costs, which we multiplied over a period of 40 days  
14 and we came out to this budget.

15 Q Once you had the gross figure, you allocated,  
16 pursuant to your budget, several job positions and the  
17 amounts that they might be able to pay; is that correct?

18 A Yes, that is correct.

19 Q And you wrote that down in the budget, Exhibit  
20 D, and submitted that to the United States Government?

21 A Yes, sir, that is correct.

22 Q You note the exhibit was received by the Govern-  
23 ment on June 2nd.

24 When did you next hear from the Government with  
25 reference to your application for participation?



1  
2 A Yes, sir. I received that from a phone call --  
3 I can't recollect now --I believe it was Mr. Eadie or a  
4 young lady, Michele Bouchard, his assistant. I sent my --  
5 I was going to say "my friend" -- at the time, Pedro  
6 Rodriguez, deputy director, and he went down there and he  
7 received the approval.

8 Q Did the approval correspond exactly with your  
9 request for participation as noted in the application?

10 A No, sir. The approval stated that out of the  
11 63 sites that we turned in, they approved 40 or 41 sites.  
12 or 42 sites -- I can't recall it at the moment -- and a  
13 total of 8800 or 8700 lunches, almost half of what we  
14 submitted.

15 Q Was there a general across-the-board reduction  
16 in the funding allocation in the City of New York by the  
17 United States Department of Agriculture during that 1975  
18 Summer Lunch Program?

19 A Yes, sir, not only in the City, but in the State.

20 Q Were you advised as to how much that pro rata  
21 reduction was?

22 A 30 percent--between 30 percent and 35 percent.

23 Q Is that what you experienced?

24 A Yes, sir.

25 Q What did you do when you received that communicati



1 rklm

Puig-direct

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2 program to observe whether Mr. John Sammarco did so?"

3 A Yes.

4 Q Did he?

5 A Yes.

6 Q Did you have opportunity to observe how much  
7 working time, in fact, was required for Mr. John Sammarco  
8 to complete those duties to which you had assigned him?

9 A Two hours, three hours, three-and-a-half hours.  
10 Nothing more than that, to travel downtown and come back  
11 up.

12 Q And the job was performed?

13 A Yes, sir.

14 Q Let's take up Miss Susan Horowitz, please.

15 During your employment there, was she employed?

16 A Yes, sir.

17 Q In what capacity was she employed?

18 A Monitor, vendor trouble-shooter.

19 Q I note those terms are different than you have  
20 in the budget received by the Government on June 2, 1975  
21 and prior to the reduction.

22 What do you mean by those terms?

23 A A monitor.

24 Q Of what?

25 A Of Youth In Government. Had to go to the vendor



1 to take care of problems. Had to be at the vendor.

2 Q To do what?

3 A To increase, decrease, to make sure the lunches  
4 were going out from the vendor.  
5

6 Q Do you know whether or not, in fact, she did  
7 do that?

8 A Yes.

9 Q Can you tell us from your observation during  
10 that summer, how long it took for the monitor of Youth In  
11 Government at the vendor's plant to perform her function?

12 A It could have taken anywhere between two and  
13 three hours. The trucks went out, everything was done,  
14 increases or violations were reported to the vendor, and  
15 that was it. She didn't make sandwiches. She didn't have  
16 to stick around there.

17 Q Did she perform that job?

18 A Yes.

19 Q What happened to your program towards the end  
20 of July, the beginning of August, 1975, Mr. Puig?

21 A It went downhill. It disrupted and fell apart.

22 MR. EPSTEIN: I move that be stricken.

23 Q Would you define that for us and tell us what  
24 you mean?

25 A People were not getting paid; people were not

1  
2 Q Mr. Schwab, can you please tell us, firstly, if  
3 you are a member of the bar of the State of New York?

4 A Yes, I am.

5 Q Can you recall, sir, what year you were admitted  
6 to the bar?

7 A 1934.

8 Q Am I correct, sir, that you are not practicing at  
9 the bar as a lawyer, but you are a businessman?

10 A I never practiced.

11 Q You have been in business for most of your life?

12 A Yes.

13 Q Sir, do you know Susan Horowitz?

14 A Yes, sir.

15 Q Can you tell us in what connection you have known  
16 Susan Horowitz for the years that you have, and also tell  
17 us the number of years you have known her?

18 A Well, we lived at 163 Ocean Avenue for approximately  
19 30 years and we got to know the Horowitzes before Susan was  
20 born.

21 Q Before she was born?

22 A That is right. Then we have seen her grow up.  
23 We have known her ever since, her whole life.

24 Q Am I correct, sir, that the meaning of that is  
25 that your family, the Schwab family, and the Horowitz family



1 lived in the same building on Ocean Avenue in Brooklyn?

2 A Yes.

3 Q For 30 years?

4 A Yes.

5 Q And that she was born in that house and raised  
6 in that building?

7 MR. EPSTEIN: Objection.

8 THE COURT: Mr. Honig, will you please confine  
9 yourself to the purpose for which we interrupted to take  
10 this witness?

11 Q Am I correct, you have known her all of her life?

12 A Yes.

13 Q As the result of being a neighbor?

14 A That is right.

15 Q As the result of being a neighbor and knowing her  
16 all of her life, had you observed and have you had an  
17 opportunity to discuss with the people in that building  
18 the reputation of this girl, as she grew up into womanhood,  
19 for honesty, integrity and for general character?

20 A My own experience with her has been of that  
21 nature. She has been honest, has integrity, and sincere.

22 Q Have you had an opportunity to discuss that with  
23 other people who were neighbors in that building?

24 A Yes, we have.  
25

1  
2 Q What has been, from your discussions, her general  
3 reputation for honesty and integrity?

4 A She has always had that. She was always well-  
5 liked.

6 MR. HONIG: Nothing further.

7 CROSS-EXAMINATION

8 BY MR. EPSTEIN:

9 Q Mr. Schwab, you haven't heard the evidence in  
10 this case?

11 A No.

12 Q And you haven't seen the indictment, have you?

13 A I have not.

14 Q Mr. Schwab, do you know Joel Barkan?

15 A No, I don't. Joel Barkan, is he her husband or  
16 was he her husband? That name Joel is familiar to me.

17 Q That leads me to my next question.

18 Do you know what Miss Horowitz's relationship  
19 with Mr. Barkan was?

20 A I don't know his last name, but the name Joel  
21 probably was her husband.

22 Q Do you know whether Miss Horowitz is married at  
23 the moment?

24 A She was married or she is married. I think she  
25 is married, yes.



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Janowitz-direct/cross

841

A I did.

Q Did you have an opinion with respect to her character and reputation generally, and with respect particularly for honesty and integrity?

A I certainly would.

Q Would you please state that opinion?

A I knew Susan Horowitz to be an honest, forthright person, without any pretense at all, and neighbors in the house uniformly shared my opinion.

Q Do you know Susan Horowitz to have ever been married?

A No.

CROSS-EXAMINATION

BY MR. EPSTEIN:

Q Mr. Janowitz, do you know Joel Barkan?

A No.

MR. EPSTEIN: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. HONIG: No further witnesses, your Honor, right now. Thank you very much for the interruption.

A N G E L O P U I G, resumed.

THE COURT: We are waiting for you, Mr. Hammer.

MR. HAMMER: The direct has been completed, and

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Puig-direct

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2

A Early June, when they volunteered, or the middle of June. I can't recall.

4

Q Was that fact known to the other monitors, meaning Frank and Pedro Rodriguez and Birriel and Rogers, et cetera?

6

A Yes.

7

8

9

10

11

Q Did Miss Horowitz have anything to do with the preparations of any reports or forms, or the maintenance of any payroll records or invoices for reimbursement in connection with the Summer Lunch Program of 1975 involving Youth In Government?

12

A It wasn't her function.

13

Q Did she have anything to do with it?

14

A No.

15

16

17

Q Did she have anything to do with causing the making of any report or any application or any request for reimbursement or any voucher or any payroll record?

18

A No.

19

20

Q Mr. Puig, were you the overall director of that Youth In Government program for those months?

21

A Yes, I was.

22

23

Q Was Sue Horowitz, as well as all the other employees, directly responsible to you?

24

A Yes, they were.

25

Q In that connection, was there any default or



1 deficiency in the assignments given to Horowitz during  
2 July and August?

3 A Any default?

4 Q Any defaults or omissions or deficiencies in  
5 what she was supposed to do in her assignment?  
6

7 A She did her assignment.

8 Q What was that, sir?

9 A She was at the vendor's. She was at the vendor's  
10 to report increases, decreases, to make sure that the  
11 lunches got out to the sites and to make sure that the  
12 vendor was performing its job.

13 Q Was she required to do anything beyond that?

14 A That was it.

15 Q Was she required to be in the 2176 Amsterdam  
16 office?

17 A No, she had no reason to go to the 2176 Amsterdam  
18 office.

19 MR. HONIG: That is all I have.

20 DIRECT EXAMINATION

21 BY MR. FLYNN:

22 Q Mr. Puig, you indicated in your earlier testimony  
23 that there were cutbacks in the program and reallocation  
24 of resources.

25 Can you tell us whether or not, in your experience

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Puig-cross

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Q Did you promise to make anyone a supervisor?

A No.

Q You never discussed supervisory positions with anybody?

A Not at that point.

Q You never told anyone?

A Not at that point.

Q When did you first meet Mr. Sammarco?

A Somewhere in the first week of June, I believe.

Q Did you also meet Miss Horowitz the first week of June?

A I believe so.

Q And Miss Anes, you knew for some time?

A Yes.

Q You knew that Mr. Buigues had prior acquaintance with Mr. Sammarco, did you not?

A Yes.

Q And you knew that Miss Horowitz had a prior acquaintance with Mr. Buigues, did you not?

A Who?

Q Miss Horowitz; correct?

A Yes, sir.

Q Of the people in the program, Mr. Puig, Mr. Pedro Rodriguez had been an acquaintance of yours, is that



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Puig-cross

869

A Three years.

Q Frank Rodriguez had been an acquaintance of yours?

A Correct.

Q And that is also true of Edward Rogers, Gary Gilchrist, Moises Birriel, as well?

A Yes.

Q What about Robert DeLeon?

A Yes.

Q These were all acquaintances of yours from Columbia?

A Yes.

Q Did any of them know Mr. Buigues for any time before that?

A I believe they met him in my apartment.

Q During the organization of this program?

A Yes.

Q So the people who Mr. Buigues brought into the program were Miss Horowitz and Mr. Sammarco?

A On his recommendation, yes.

Q They were hired on his recommendation?

A Yes.

Q Not on yours?

A No.

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Puig-cross

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Q Did Mr. Buigues consult you about hiring these people?

A Yes, he did.

Q What did he say to you?

A He told me that they needed jobs.

Q He told you that Miss Horowitz needed a job?

A Yes.

Q Did he say anything else about her?

A That is all; she needed a job.

Q Did he say she was a friend of Joel Barkan?

A No, sir.

Q Do you know who Joel Barkan is?

A I have heard the name.

Q Do you know that he is Mr. Buigues' boss?

A I heard that rumor.

Q Did you know that or didn't you?

A Did I know he was Mr. Buigues' boss?

Q Yes.

A Yes.

Q Miss Anes, you knew, was a friend of Mr. Buigues; is that correct?

A She was not a friend of Mr. Buigues. She is the mother of his child and I knew that.

Q Thank you.



2 A Yes.

3 Q You said they did about the same thing?

4 A No, sir.

5 Q How often did you see Miss Horowitz at work?

6 A At the vendor?

7 Q How often did you see her at work?

8 A At the vendor where she was supposed to be working,  
9 where her site was supposed to be at or her function?

10 Q Yes.

11 A About once a week.

12 Q What were her hours, if you know?

13 A If she was supposed to be there, if she completed  
14 her task --

15 THE COURT: You are not answering the question.

16 What time was she supposed to be there?

17 A 6 o'clock, 5:30 in the morning until approximately  
18 8:30, 9 o'clock.

19 Q So she had a two- to three-hour job?

20 A If her function was completed.

21 Q Did you ever advise her she need only work two  
22 to three hours?

23 A Did I ever advise her?

24 Q Yes.

25 Have you said, as long as she got her job done,

1 she could come and go as she pleases?

2 A If the job was completed.

3 Q Did you know Miss Horowitz had another job?

4 A Yes.

5 Q How did you know that?

6 A From the vendor.

7 Q I am sorry?

8 A From the vendor, from Mr. Massielli. He used  
9 to tell me she was a pain in the ass.  
10

11 THE COURT: The question was: Did you know she  
12 had another job and how did you know that? You said you  
13 knew she had another job.

14 THE WITNESS: No, sir. I thought I heard the  
15 question to ask: Did she complete her job there?

16 THE COURT: Let's go back.

17 The Government lawyer asked you: Did you know  
18 she had another job?

19 THE WITNESS: No, sir.

20 THE COURT: You didn't know that?

21 THE WITNESS: No, sir.

22 Q Did you ever hear of Arawak Consulting Corporation?

23 A Yes.

24 Q You heard " it at that time?

25 A No, this year.



1

2

Q Was the answer yes or no?

3

A Yes, and --

4

THE COURT: Wait for the next question.

5

Q You said "She worked full time"?

6

A She worked full time and performed her duty.

7

Q Did you also say "full time" meant two to three

8

hours?

9

A I said "In performance of duties."

10

Q Did you say, when you were interviewed in the

11

United States Attorney's office, that the full time for

12

Miss Horowitz meant two to three hours?

13

A You never asked me about hours.

14

Q Did you ever say that?

15

A No, you didn't ask me hours.

16

Q You just said "She worked full time."

17

A In the performance of her duties.

18

Q Did you also say Mr. Sammarco worked full time?

19

A In the performance of their duties.

20

Q Did you also say Mr. Sammarco took some days off,

21

when you were interviewed in the U.S. Attorney's office?

22

A I don't recall.

23

Q Do you recall Mr. Sammarco taking approximately

24

ten days off?

25

A I don't recall, sir, and I don't believe I ever



1 words used to describe one activity. I have in mind the  
2 testimony you have given so far about words like "trouble-  
3 shooter" --  
4

5 THE COURT: Just ask questions, please; don't  
6 review anything.

7 Q Just listen to my question: Was there any  
8 particular designated job title that was sent out from  
9 the Department of Agriculture to call and designate each  
10 and every individual in your employ?

11 A No.

12 Q Did the Department of Agriculture, in the orien-  
13 tation you got down at the office or in any directive  
14 that Youth In Government received, specify any job title  
15 or any kind of occupational description for any employee  
16 in Youth In Government?

17 A No, they did not have to dictate to us.

18 Q Can the Department of Agriculture, in the  
19 orientation or any directive you received for your opera-  
20 tions in 1975, specify that the work was to be rated or  
21 prorated on an hourly rate rather than on a weekly rate?

22 A No, sir.

23 Q I didn't hear you.

24 A No, sir.

25 Q I now have reference, in my next questions, to



1 Exhibits D and E, your Application for Participation and  
2 your Projected Budget.  
3

4 Were these two documents one total complete  
5 submission, at the same time, to the Department of Agricul-  
6 ture?

7 THE COURT: We have had all of that, and please  
8 do not engage in unnecessary examination. I am going to  
9 curtail this.

10 MR. HONIG: I will just ask one question on that.

11 THE COURT: You will not ask a question on that  
12 at all; only things that were brought out on cross.

13 MR. HONIG: That was discussed.

14 THE COURT: It was not discussed on the cross.  
15 We have had enough.

16 MR. HONIG: I respectfully submit, Mr. Epstein --

17 THE COURT: Would you please go ahead with your  
18 questions. You have had my ruling.

19 Q Do you recall, sir, Mr. Epstein showing you this  
20 form just now, and going down the number of weeks for the  
21 different people, ten weeks, 12 weeks for director?

22 A I recall that.

23 Q When this form was submitted, did you receive  
24 this form back, in any way, as being improperly filled  
25 out?



1  
2 A If I would have --

3 THE COURT: Answer the question.

4 A No.

5 Q Did the orientation or in any directive you  
6 received from either Eadie or Bouchard or anybody in the  
7 Department of Agriculture, set up a group or class of  
8 people or any model for who should or should not be employed  
9 in any way in Youth In Government for the summer program  
10 of Youth In Government, 1975?

11 A 8-29-75; August 29, 1975.

12 Q Sir, was Susan Horowitz's job done as of that  
13 day?

14 A It was.

15 Q Did she have to perform or did she perform or  
16 do anything, in connection with the audits or anything  
17 else thereafter, concerning Youth In Government for the  
18 1975 program?

19 A Sir, she didn't have to.

20 Q Did you, as the director, or anybody else of  
21 Youth in Government, advise or tell or prohibit Susan  
22 Horowitz from having any other job during the period she  
23 worked for Youth In Government?

24 A No, sir.

25 Q Did any other job she held or may have held in



1 July and August of 1975 in any way interfere or disrupt or  
2 impede her work, that you assigned to her as a vendor liaison  
3 -- sustained.  
4

5 Insofar as your being the director, sir, and  
6 her boss, did her end of the job get done in Youth In  
7 Government for those two months?

8 A Yes.

9 MR. HONIG: Nothing further.

10 REDIRECT EXAMINATION

11 BY MR. FLYNN:

12 Q Mr. Puig, did Mr. Sammarco ever give you any  
13 instructions on the preparation of anything that you had to  
14 submit to the Department of Agriculture?

15 A No, sir.

16 Q Did he ever tell you to submit anything?

17 A No, sir.

18 Q Directly or indirectly, he never prepared any  
19 document for you for submission to the Department of  
20 Agriculture?

21 A No.

22 THE COURT: Anything else, Mr. Epstein?

23 MR. EPSTEIN: Just two or three questions.

24 THE COURT: The inevitable two or three questions  
25 which end up taking a half hour.



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Irish-direct

952

2 C A R L E T O N I R I S H, called as a witness by  
3 the defendant Horowitz, being first duly sworn,  
4 testified as follows:

5 THE WITNESS: My home address is 112 Decatur  
6 Street, Brooklyn, New York, 11216.

7 DIRECT EXAMINATION

8 BY MR. HONIG:

9 Q Mr. Irish, will you please tell his Honor and  
10 the jury what your occupation or vocational background is?

11 A At present, I am the director of the Office of  
12 School Safety for the New York City Board of Education.

13 Q Prior to that, sir?

14 A Immediately prior to that, I was an assistant  
15 to the mayor, under both Mayor Beame and Mayor Lindsay,  
16 and before that I spent 17 years in the police department.

17 Q Along that route of work, had you occasion to  
18 come in contact with Susan Horowitz?

19 A Yes, I did.

20 Q When, sir, was that?

21 A In 1973, I hired Susan Horowitz to be a member  
22 of the Mayor's Office of Special Community Problems and  
23 a member of the Mayor's Education Task Force.

24 Q Did she work in that connection and were you her  
25 immediate superior?



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A Yes, I was.

Q For how long did she work in that connection?

A I believe it was two years, a little over two years.

Q What brought the termination of that employment?

A With the fiscal crisis that came on, we had to cut the staff; and as the result, we had to terminate Susan.

Q Can you tell me, sir, since that time, have you remained in association and friendship with this young lady?

A I have.

Q During the course of the time when she was under your supervision as an employee on the Mayor's Task Force, what was her function and mission?

A Well, we had a fairly unique kind of operation --

THE COURT: Just tell us what her job was.

A Basically what it was: she had a field job where she was responsible for a certain area of the city, in terms of being an information person, getting information for the mayor and myself and, through me, to the mayor, as to problems in the community, heated situations, et cetera, and also school problems.

Q When you say "heated situations," what does that mean?

1  
2           A     We were basically the operation that dealt with  
3 community problems, if there were problems in particular  
4 areas of the city where something came up that would cause  
5 community unrest. We tried to deal with it before it got  
6 to the level of street demonstrations.

7           Q     Was she charged with the duty of going around in  
8 her area concerning school righting?

9           A     Yes.

10          Q     And in the course of her work and in the course  
11 of your being her superior and supervisor, were you able  
12 to assay and evaluate and form opinions with respect to  
13 the performance of her work, her loyalty to her job, the  
14 promptitude with which she did her work and her general  
15 reputation for integrity and honesty?

16          A     I did, yes.

17          Q     Can you please give us your opinion, with respect  
18 to your conclusions, concerning her work performance, her  
19 timeliness and her reputation for devotion to work and  
20 for general reputation for honesty and integrity?

21          A     They were of the highest order as far as I can  
22 ascertain, because the people that worked for us were  
23 fairly independent in operation. They had very little  
24 field supervision and we had to depend on them. They were  
25 available 24 hours a day. They all had beepers and we had



1 to depend on them to be independent and to take care of  
2 their responsibilities without direct and sustained super-  
3 vision.  
4

5 Q Did you find Susan to be dependable in that  
6 regard, regardless whether she was or was not supervised?

7 A Yes, sir.

8 MR. HONIG: Thank you very much, Mr. Irish.

9 You may inquire.

10 THE COURT: Mr. Hammer?

11 MR. HAMMER: No.

12 CROSS-EXAMINATION

13 BY MR. EPSTEIN:

14 Q Do you know Joel Barkan?

15 A Yes.

16 Q Did Miss Horowitz get her job with the Mayor's  
17 Education Task Force on Mr. Barkan's recommendation?

18 A No.

19 Q Do you know the relationship between Miss  
20 Horowitz and Miss Barkan?

21 A I know she knows him.

22 MR. EPSTEIN: That is all.

23 THE COURT: You are excused.

24 (Witness excused.)

25 MR. HONIG: I call Sam Hartenberg.

1  
2 S A M H A R T E N B E R G, called as a witness by  
3 the defendant Horowitz, being first duly sworn,  
4 testified as follows:

5 THE WITNESS: My home address is 7026 Washington  
6 Street, Manhattan, 10014.

7 DIRECT EXAMINATION

8 BY MR. HONIG:

9 Q Mr. Hartenberg, would you please tell us your  
10 profession and occupation?

11 A I am a professor of philosophy at the City  
12 University, York College.

13 Q York College?

14 A Yes.

15 Q Is that college located in the Borough of Queens?

16 A It is.

17 Q Were you a professor in the Department of  
18 Philosophy back in the late 60s, early 70s?

19 A Yes. I worked at first in the administration  
20 of the college, during its early days, in planning; then  
21 I was a professor of philosophy.

22 Q And you are still, to this date, a professor of  
23 philosophy at the same college?

24 A Yes.

25 Q During the course of your pedagogic work at York



1 during the summer of 1970, I believe it was. We had a two-  
2 year-old baby and we invited her to come with us to look  
3 after the baby and to be a companion to the baby.  
4

5 Q So that it was not just a casual professor up  
6 on the lectern and a student somewhere down in the general  
7 area, but you got to know her much more personally, is that  
8 right?

9 MR. EPSTEIN: Objection.

10 MR. HONIG: I will withdraw the question.

11 Q As the result of all your associations with her,  
12 were you able to form an opinion with respect to this young  
13 lady's character, in particular with respect to her  
14 character insofar as honesty and integrity goes?

15 A Yes, I was.

16 Q Do you have such an opinion that you can tell us  
17 about now?

18 A As a student, I thought she was a good student  
19 and a serious one; but I was impressed also, in the 60s,  
20 since colleges were somewhat in turmoil and Miss Horowitz  
21 played a role as a student leader and she played a responsible  
22 role; and it was on the basis of her responsibility, as a  
23 student leader, that I asked her to spend the summer with  
24 us.

25 Q When you say "the colleges were in turmoil and she

A I didn't know they had a relationship.

MR. EPSTEIN: No further questions.

MR. HONIG: Thank you.

(Witness excused.)

MR. HONIG: May I call my next witness?

THE COURT: That is five witnesses on this point  
and, I believe, that is enough.

MR. HONIG: Your Honor, I have two more and they  
will be of the shortest brevity.

THE COURT: You can use one, that is all. Pick  
one and that is it.

W I L L I A M D A L Y, called as a witness by the  
defendant Horowitz, being first duly sworn, testified  
as follows:

THE WITNESS: My home address is 2 Marine View  
Plaza, Hoboken, New Jersey, 07030.

DIRECT EXAMINATION

BY MR. HONIG:

Q Mr. Daly, by whom are you presently employed?

A I am employed by the Federal Government, the  
Office of Equal Employment Opportunity Commission.

Q And your office, where you do your job, is where,  
sir?

A 90 Church Street, here in New York City.



1  
2 Q Are you familiar with and do you know Susan  
3 Horowitz?

4 A Yes, I do.

5 Q How is it that you know Susan Horowitz?

6 A Susan is employed by the commission. She is a  
7 field investigator.

8 Q Speak up a little louder.

9 A She is an investigator with the Equal Employment  
10 Opportunity Commission since May of this year.

11 Q And she is presently employed, to this date, in  
12 the same office of Equal Employment Opportunity Commission,  
13 as you are?

14 A Yes.

15 Q By the way, your title is what?

16 A I am a supervisor of investigators and conciliators

17 Q Do you have occasion, therefore, since May of  
18 1976, to the present date, to see Susan Horowitz every day  
19 at her job at the Federal Government?

20 A Yes, I do.

21 Q Can you tell me, sir, what time is it you arrive  
22 at work?

23 A I arrive at work at 7:30 in the morning.

24 Q Can you tell us what time you have witnessed,  
25 yourself, that Susan Horowitz arrives at work?

1  
2 MR. EPSTEIN: Objection.

3 A She arrives about the same time.

4 THE COURT: Will you kindly confine the inquiries  
5 to the purpose for which the witness is called. This  
6 witness is not called as a fact witness in this case;  
7 therefore, kindly contain the questions to the purposes for  
8 which he is called.

9 MR. HONIG: Precisely.

10 Q Mr. Daly, as the result of your occupation with  
11 the Federal Government, in the Equal Employment Opportunities  
12 Commission, have you had an opportunity to observe, in the  
13 last six months to the present date, the performance of  
14 Susan Horowitz, with respect to her job, in connection with  
15 her integrity, her devotion, and her timeliness?

16 A Yes.

17 Q Can you please render to this Court an opinion  
18 with respect to those areas of performance?

19 A Yes, I can. She is a very industrious, very  
20 intelligent, a very good worker; and she is also punctual,  
21 very punctual.

22 Q Do you know a man named "Joel Barkan"?

23 A Yes.

24 MR. HONIG: Thank you very much. Nothing further.

25 THE COURT: Any cross-examination?



1 rk1m Buigues-direct 995  
2 A I have never run for office. I am not a politi-  
3 cian. I don't have any political debts.

4 Q Would you tell us, please, the circumstances  
5 upon which Youth In Government came to employ Miss Susan  
6 Horowitz?

7 A If I recall correctly, I think I had met her at  
8 some social function a few months prior to the program  
9 and at that time she told me that she had been let go from  
10 her job, or something to that effect, and she was looking  
11 for a job.

12 Q Did you ask her to aid in the preparation of the  
13 program?

14 A At that particular moment, no. That was just the  
15 trend of the conversation. At some later date, I think  
16 we had lunch, or something to that effect. Then I told her  
17 about the program and she got involved and helped in the  
18 preparation and was subsequently hired.

19 Q Are you familiar with this gentleman, Joel Barkan?

20 A Yes, I am.

21 Q Who is he?

22 A Joel Barkan was my former boss at the Office  
23 of Economic Opportunity for the Office of Civil Rights,  
24 HEW -- I am sorry -- Office for Civil Rights, HEW. I also  
25 know him from the Office of Economic Opportunity. He



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worked there, also, with me.

Q Do you know that Miss Horowitz is familiar with Mr. Barkan? Did you know that?

A I have seen them together on occasions.

Q Did Mr. Barkan, as your superior, urge and insist upon employment of Miss Horowitz in the program in which you were active in?

A No.

Q Did he recommend her to your attention?

A No, he did not.

Q In any event, Mr. Buigues, the program commenced on or about the last day of June, is that correct?

A That is right, Mr. Hammer.

Q And the salaries were thereafter paid on a weekly basis, were they not?

A Yes, they were.

Q Out of what funds?

A Out of the funds that we had borrowed from the United Americas Bank. They received their checks, weekly, every week, for the first four weeks of the program until the money ran out.

Q You have had opportunity, have you not, to see, in the course of these proceedings or beforehand, the Government's Exhibit 4, the payroll book; have you not?



1  
2 One of the things I required -- and possibly  
3 that is why many of the fellows that were here previously  
4 testifying, they didn't want to see me up at the store  
5 front because I was always on top of them to sign in every  
6 day -- I wanted them to sign in every day. I wanted them  
7 to make sure that the travel vouchers were filled out  
8 properly. I wanted to make sure that all the receipts came  
9 back, that none of them were missing. I was on top of  
10 that all the time. It ran smoothly for the first four  
11 weeks of the program.

12 Q Were Miss Anes, Mr. Puig, Miss Horowitz and Mr.  
13 Sammarco performing up to the level required?

14 A As far as I was getting it from the executive  
15 director, because I wasn't there all the time. I was  
16 there for the first two weeks.

17 Q I am talking about, when you were there during  
18 the first two weeks, you had opportunity to see.

19 A Yes, they were performing.

20 Q And the others were, too?

21 A Yes, they were.

22 Q Could you tell me, Mr. Buigues, how many hours,  
23 in fact, it was required for the several monitors in the  
24 employ of Youth In Government to accomplish their mission  
25 each day?



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Buigues-direct

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2 A Some monitors could have finished in two hours.  
3 The whole task really was over in two-and-a-half to four  
4 hours.

5 Q Did the monitors, once having performed their  
6 on-site duties and having returned to the office and prepared  
7 whatever was required, have to remain on-premises thereafter?

8 A They were all supposed to report back to the  
9 store front and turn in their reports.

10 Q Did they do so?

11 A For the first four weeks, yes.

12 Q Forgive me, Mr. Buigues, I don't recall whether  
13 or not you said that you took a vacation in June or the  
14 first part of July. What is the fact?

15 A I am sorry. It was the end of June, the first two  
16 weeks of July. The first few weeks of the program. The  
17 program started June 30 and I recall that date very well,  
18 because the authorization that was sent by the U.S. Depart-  
19 ment of Agriculture stated it started on 7-30 and we had  
20 started on 6-30. Then, we weren't sure whether we would  
21 get paid for 6-30 and we had to go try and amend that, and  
22 we had conversations with Mr. Eadie. It was just an  
23 experience.

24 MR. EPSTEIN: I move that be stricken.

25 THE COURT: That may go out. It is not responsive



1 rklm

Buigues-direct

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2 EVENING SESSION

3 8 p.m.

4 (In open court; jury present.)

5 THE COURT: We are missing two lawyers.

6 (Pause.)

7 THE COURT: Let's begin.

8 DIRECT EXAMINATION

9 BY MR. HONIG:

10 Q Mr. Buigues, you stated you came into contact  
11 with Susan Horowitz a few months before the program started,  
12 at some social event; do you recall that, when Mr. Hammer  
13 was questioning you?

14 A Yes.

15 Q Is that the first contact or had you known this  
16 lady before?

17 A I knew her from before. She worked with me at  
18 the Offices of Economic Opportunity back in 1970, '71.

19 Q So you had known her for some three or four years  
20 before that particular contact?

21 A Yes.

22 Q And you were fellow-workers together?

23 A Yes.

24 Q Had you occasion to see her through the years?

25 A Yes, sir.

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Buigues-cross

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A When?

Q In June of 1975.

A June of 1975?

Q Yes.

A If I recall correctly, he possibly was, yes.

Q And he was your superior from the period January through June of 1975?

A As far as I can recall, yes.

Q On April 27, 1975, Mr. Barkan approved a salary increase for you, didn't he?

MR. HAMMER: Objection.

THE COURT: Overruled.

A You will have to explain what that is, because I have gotten several salary increases.

Q On April 27, did you receive an increase in salary from \$21,538 to \$23,270?

A That is probably our yearly increment.

Q Did Mr. Barkan approve this request?

A I guess, under normal circumstances, he would have to because he was the boss.

Q Directing your attention, Mr. Buigues, to January 19, 1976, did you receive another salary increase at that time?

MR. FLYNN: What is the date?



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Buigues-cross

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2 MR. HAMMER: Objection. I don't think that is  
3 relevant to the issues of this trial and certainly is out-  
4 side the scope of the case.

5 THE COURT: Overruled.

6 A You are reading from a paper, Mr. Epstein. I  
7 don't know. If you can show me the paper.

8 Q Government's Exhibit 27 for identification.  
9 Does that refresh your recollection about whether you  
10 received a salary increase in January of 1976?

11 MR. FLYNN: I would object on behalf of the  
12 defendant Sammarco.

13 THE COURT: Overruled.

14 A This doesn't look to me like the normal way that  
15 one would get an increase. It just looks like an IBM  
16 sheet. The increases in the Federal Government are done  
17 through competitive-examination process.

18 THE COURT: Did you get a salary increase in  
19 January of 1976?

20 THE WITNESS: I have gotten a few salary increases.  
21 I am not sure what date.

22 THE COURT: You got one in April, '75, you say.  
23 Did you get another one in January, '76?

24 THE WITNESS: I think so, your Honor. That is  
25 what it says here.

1 Q Did Mr. Barkan approve that increase?

2 A As my boss, he would have to approve it, yes.

3 Q Is that an increase in salary from \$24,434 to  
4 \$25,198?

5 A Very possibly so.

6 Q Mr. Buigues, you are chairman of the board of  
7 Youth In Government?

8 A Yes.

9 Q Youth In Government does nothing other than run  
10 Summer Lunch Programs, is that correct?

11 A No, that is not correct.

12 MR. HAMMER: Objection. During what period do  
13 we speak?

14 THE COURT: If it doesn't come out this way, you  
15 will have your chance again. Now, this is cross-examina-  
16 tion and he is entitled to question the witness.

17 Q From the period January 1st, 1975 to the present,  
18 Youth In Government has done nothing except run Summer  
19 Lunch Programs?

20 A What do you mean by "nothing"?

21 THE COURT: No other thing?

22 THE WITNESS: What does that mean, "No other  
23 thing"? I really don't understand the question.

24 THE COURT: Go ahead with the next question.



1

2

A No, sir.

3

Q Do you own a gun?

4

A No, sir.

5

Q Mr. Buigues, do you know how many hours Susan

6

Horowitz worked during the course of a week?

7

A No, sir.

8

Q Do you know what she did?

9

A I think she worked at the vendor.

10

Q Do you know how many hours John Sammarco worked

11

during the course of a week?

12

A No.

13

Q Do you know how many days during the course of

14

the program Mr. Sammarco worked?

15

A No.

16

Q Do you know whether he worked every day in the

17

program?

18

A No, sir.

19

Q Do you know how many hours Irma Anes worked in

20

the program?

21

A Many.

22

Q Do you know how many hours Irma Anes worked in

23

the program?

24

A Weekly, I don't know. I know it was many.

25

Q Do you have a detailed knowledge of what the site

monitors did?

A I have a pretty general knowledge.

Q Do you have a detailed knowledge of what Miss Horowitz did?

A No.

Q Do you have a detailed knowledge of what Mr. Sammarco did?

A No.

Q Mr. Buigues, what was Mr. Sammarco's position in the program?

A Liaison between the USDA and Youth In Government?

Q Was Mr. Sammarco a supervisor?

MR. FLYNN: Objection. Irrelevant and immaterial in addition to the other reasons I earlier addressed.

THE COURT: Overruled.

Q Was Mr. Sammarco a supervisor?

MR. FLYNN: Objection. Same reasons.

THE COURT: You may answer.

A I think we are playing with titles and names. He had a job --

THE COURT: Just answer the question.

Was he or was he not a supervisor?

THE WITNESS: That is really broad.

A The answer is no.



1           Q     Mr. Buigues, did you make any promise at any time  
2           to anybody, either Susan Horowitz or anybody, in the Youth  
3           In Government organization or anybody outside the Youth  
4           In Government organization, that you would employ Miss  
5           Horowitz in some type of frivolous no-show job?  
6

7           A     No, sir.

8           Q     The 11 employees that were operating and working  
9           the delivery of food to those children, were they all  
10          necessary to complete the daily services of getting the  
11          food from the vendor to the site to the consuming child?

12          A     Yes, sir.

13          Q     Was anybody on your staff hired after the budget  
14          reductions and in particular, keeping that in mind, as a  
15          "fat cat"?

16          A     No, sir.

17                THE COURT: Is that it?

18                MR. HONIG: Just about.

19                THE COURT: You have some more questions?

20                MR. HONIG: Yes.

21                THE COURT: Go ahead.

22          Q     Did the agreement that is now in evidence prohibit

23                THE COURT: That speaks for itself. Don't go any  
24          further.

25          Q     Do you know, sir, in the exhibit which is in

1  
2 Government from the Department of Agriculture, were you  
3 functioning with the vendor in any way?

4 A With the vendor?

5 Q Yes.

6 A No. We were functioning only as representatives  
7 of the Government.

8 Q When you say "functioning with the vendor," as  
9 the representative of the Government, was it part of your  
10 function to police, monitor or trouble-shoot with the  
11 vendor that was supplying?

12 A No, it wasn't.

13 Q Did the Government provide anybody in the summer  
14 of 1975 to bust the tail of the vendor to see they were  
15 complying with their agreement?

16 A I can't answer that question.

17 Q Was it the responsibility of the sponsoring  
18 company, meaning Youth In Government, to select the vendor  
19 and to see that he fulfilled the requirements?

20 A Yes, that is correct.

21 Q Sir, in addition to Youth In Government as being  
22 the particular organization that you monitored, were there  
23 other organizations, sponsors, under your particular  
24 monitoring?

25 A Not as a general rule. Occasionally, we did go



1 rklm 40

2 THE FOREMAN: No, we haven't, your Honor.

3 THE COURT: Has the jury found unanimously as  
4 to Count 2 as to Angelo Puig?

5 THE FOREMAN: Yes, we have.

6 THE COURT: How do you find?

7 THE FOREMAN: Guilty.

8 THE COURT: Has the jury found unanimously as to  
9 Count 3 as to Angelo Puig?

10 THE FOREMAN: Yes, we have, your Honor: guilty.

11 THE COURT: Has the jury found unanimously as  
12 to Irma Anes on Count 1?

13 THE FOREMAN: Yes, we have, your Honor.

14 THE COURT: How do you find?

15 THE FOREMAN: Guilty.

16 THE COURT: Count 2 on Irma Anes?

17 THE FOREMAN: Guilty.

18 THE COURT: Count 3 as to Irma Anes?

19 THE FOREMAN: Guilty.

20 THE COURT: Has the jury found unanimously in  
21 respect to Susan Horowitz on Count 1?

22 THE FOREMAN: Yes, we have, your Honor.

23 THE COURT: How does the jury find on Count 1 as  
24 to Susan Horowitz?

25 THE FOREMAN: Guilty.

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1 THE COURT: Count 2 as to Susan Horowitz?

2 THE FOREMAN: Guilty, your Honor.

3 THE COURT: Count 3 as to Susan Horowitz?

4 THE FOREMAN: Guilty, your Honor.

5 THE COURT: Has the jury found unanimously as to

6 John Sammarco on Count 1?

7 THE FOREMAN: Yes, we have, your Honor.

8 THE COURT: How does the jury find?

9 THE FOREMAN: Guilty, your Honor.

10 THE COURT: Count 2 as to John Sammarco?

11 THE FOREMAN: Guilty, your Honor.

12 THE COURT: Count 3 as to John Sammarco?

13 THE FOREMAN: Guilty, your Honor.

14 THE COURT: Members of the jury, harken to your  
15 verdict as it stands recorded. You say that you have found  
16 each of the defendants guilty on Counts 1, 2 and 3, except  
17 that you have not reached a verdict as yet on Angelo Puig  
18 with respect to Count 1.

19 (The jurors, having been asked the question,  
20 "Is that your verdict?," answered in the affirma-  
21 tive.)

22 THE COURT: And so say you all.

23 Mr. Johnson, you have not reported a verdict on  
24 Count 1 with respect to the defendant, Angelo Puig. Is the  
25



